99th Congress, 2d Session - - - - - - - - - - House Document 99-183

DEVELOPMENTS CONCERNING THE NATIONAL EMERGENCY WITH RESPECT TO SOUTH AFRICA

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

A REPORT ON THE MAJOR ACTIONS TAKEN IN THE EXERCISE OF AUTHORITIES UNDER THE INTERNATIONAL EMERGENCY ECONOMIC POWERS ACT, PURSUANT TO 50 U.S.C. 1703

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MARCH 18, 1986.—Message and accompanying papers referred to the Committee on Foreign Affairs and ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE

71-011 O WASHINGTON : 1986

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To the Congress of the United States:

On September 9, 1985, in Executive Order 12532 (50 Fed. Reg. 36861, Sept. 10, 1985), I declared a national emergency to deal with the threat posed by the policies and actions of the Government of South Africa to the foreign policy and economy of the United States.

Pursuant to that Order, I prohibited certain transactions, including the following: (1) the making or approval of bank loans to the South African Government, with certain narrow exceptions; (2) the export of computers and related goods and technology to certain government agencies and any apartheid enforcing entity of the South African Government; (3) nuclear exports to South Africa and related transactions, with certain narrow exceptions; (4) the import into the United States of arms, ammunition, or military vehicles produced in South Africa; and (5) the extension of export marketing support to U.S. firms employing at least twenty-five persons in South Africa which do not adhere to certain fair labor standards.

In addition, I directed (6) the Secretary of State and the United States Trade Representative to consult with other parties to the General Agreement on Tariffs and Trade with a view toward adopting a prohibition on the import of Krugerrands; (7) the Secretary of the Treasury to complete a study within 60 days regarding the feasibility of minting U.S. gold coins; (8) the Secretary of State to take the steps necessary to increase the amounts provided for scholarships in South Africa for those disadvantaged by the system of apartheid and to increase the amounts allocated for South Africa in the Human Rights Fund; and (9) the Secretary of State to establish an Advisory Committee to provide recommendations on measures to encourage peaceful change in South Africa.

The declaration of emergency was made pursuant to the authority vested in me as President by the Constitution and laws of the United States, including the International Emergency Economic Powers Act, 50 U.S.C. 1701 et seq., and the National Emergencies Act, 50 U.S.C. 1601 et seq. I submitted a report regarding the declaration to the Congress on September 9, 1985, pursuant to Section 204(b) of the International Emergency Economic Powers Act. Pursuant to section 204(c) of that act, I am today reporting on the major actions taken in the exercise of the authorities contained in that act and Executive Order 12532. The following actions are listed in chronological order, and a copy of all implementing rules and regulations is enclosed.

On October 1, 1985, in Executive Order 12535, I prohibited the importation of the South African Krugerrands into the United States effective October 11, 1985 (50 Fed. Reg. 40325, Oct. 3, 1985). This Order implemented the course of action contemplated in Section 5(a) of Executive Order 12532.

On October 7, 1985, the Bureau of Alcohol, Tobacco and Firearms of the Department of the Treasury issued regulations on the Importation of Articles on the United States Munitions Import List (50 Fed. Reg. 42157, Oct. 18, 1985). These regulations implemented the prohibition of certain arms imports contained in Section 1(d) of Executive Order 12532.

On October 9, 1985, the Office of Foreign Assets Control of the Department of the Treasury issued the South African Transactions Regulations (50 Fed. Reg. 41682, Oct. 15, 1985). These regulations implemented the ban on the importation of the Krugerrand.

On October 22, 1985, the Department of State published a notice in the *Federal Register* regarding the Establishment of the Advisory Committee on South Africa (50 Fed. Reg. 42817, Oct. 22, 1985). The Charter of the Advisory Committee has been filed with the Senate Foreign Relations Committee, the House Foreign Affairs Committee, and the Library of Congress. The Committee shall render a report to the Secretary of State within one year of its first meeting, which was held on January 29–30.

On November 4, 1985, the Department of State issued proposed regulations for public comment on South Africa and Fair Labor Standards (50 Fed. Reg. 46455, Nov. 8, 1985). The draft regulations were designed to implement the fair labor provisions stated in Section 2 of Executive Order 12532. Final regulations were issued by the Department of State on December 23, 1985 (50 Fed. Reg. 53308, Dec. 31, 1985).

On November 6, 1985, the Office of Foreign Assets Control of the Department of the Treasury issued the South African Transactions Regulations (50 Fed. Reg. 46726, Nov. 12, 1985). These regulations implemented the bank loan prohibition of Section 1(a) of Executive Order 12532.

On November 8, 1985, the Secretary of the Treasury submitted a report on the feasibility of minting U.S. gold coins. On December 17, 1985, I signed the Gold Bullion Coin Act of 1985 (Public Law 99–185), which requires the minting of such coins.

On November 14, 1985, the International Trade Administration of the Department of Commerce issued regulations on Export Controls on the Republic of South Africa (50 Fed. Reg. 47363, Nov. 18, 1985). These regulations implemented the computer export prohibition in Section 1(b) and the prohibition against licensing exports to nuclear production and utilization facilities in Section 1(c) of Executive Order 12532.

The policies and actions of the Government of South Africa continue to pose an unusual and extraordinary threat to the foreign policy and economy of the United States. I shall continue to exercise the powers at my disposal to apply the measures contained in Executive Order 12532 as long as these measures are appropriate, and will continue to report periodically to the Congress on significant developments pursuant to 50 U.S.C. 1703(c).

RONALD REAGAN.

THE WHITE HOUSE, *March 17, 1986.*

ENCLOSURES

RULES AND REGULATIONS ISSUED IN IMPLEMENTATION OF EXECUTIVE ORDERS 12532 AND 12535

. Arms Imports Regulations (Treasury, Bureau of Alcohol, Tobacco, and Firearms)
. Krugerrand Regulations (Treasury, Office of Foreign Assets Control)
. South Africa Fair Labor Standards (State): Proposed regulations
. South Africa Fair Labor Standards (State): Final regulations
. Bank Loan Regulations (Treasury, Office of Foreign Assets Control)
. Computer Export Regulations (Commerce)

Enclosure 1

Federal Register / Vol. 50, No. 202 / Friday, October 18, 1985 / Rules and Regulations 42157

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 47

[T.D. ATF-218]

Importation of Articles on the United States Munitions Import List

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule (Treasury decision).

SUMMARY: On December 6, 1984, the Department of State published a final rule (49 FR 47682 [1984]) revising the International Traffic in Arms Regulations (ITAR). This final rule conforms the regulations in 27 CFR Part 47 to the revised ITAR and improves the regulatory scheme established under the Arms Export Control Act of 1976 to control the import of defense articles and defense services. This final rule also implements U.N. Security Council Resolution 558 and Executive Order 12532 (50 FR 36861 (1985)) regarding certain imports from South Africa.

DATE: This final rule is effective retroactive to October 11, 1985.

FOR FURTHER INFORMATION CONTACT: Lonnie Muncy or Teri Byers, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, NW., Washington, DC 20228, ATTN: Firearms and Explosives Imports Branch, Telephone No. (202) 566-7151.

SUPPLEMENTARY INFORMATION:

Background

Executive Order 11958 of January 18, 1977, as amended (42 FR 4311 (1977)) delegated authority to control exports of defense articles and defense services to the Secretary of State. The above Executive Order also delegated to the Secretary of the Treasury the authority to control the import of defense articles and services.

On January 23, 1974, 27 CFR Part 47 was published in its current form (39 FR 3251 (1974)). Since that time there has been no substantial revision to Part 47. On December 14, 1980, the Office of Munitions Control, Department of State, published a proposed comprehensive revision of the International Traffic in Arms Regulations (ITAR), issued under the Arms Export Control Act of 1976 (45 FR 83970 (1980)). On December 6, 1984, the Department of State published a final rule effective January 1, 1985, revising the ITAR (49 FR 47682 (1985)) which is codified at 22 CFR Parts 121-130. Pursuant to § 47.55, ATF is guided by the views of the Departments of State and Defense on matters affecting world peace, and the external security and foreign policy of the United States. After consultation with the Departments of State and Defense, the provisions of 27 CFR Part 47 are revised to conform to the State Department ITAR and Executive Order 12532 (50 FR 36861 (1985)).

Editorial Changes. Throughout the document we have amended all references to "28 CFR" to reflect "27 CFR" and "sec. 414 of the Mutual Security Act of 1954" to reflect "Sec. 38, Arms Export Control Act of 1976". Additionally, all references pertaining to the Canal Zone have been deleted as the Canal Zone is no longer under the jurisdiction of the United States pursuant to the Panama Canal Treaty of 1977.

Revision of the U.S. Munitions Import List. The defense articles controlled under Part 47 are known as the U.S. Munitions Import List. This List is an expurgated list of the articles controlled under the ITAR and known as the U.S. Munitions List. The organization of the U.S. Munitions Import List has basically stayed the same. The modifications which are made simplify and modernize the terminology in the various categories. Notable additions to the list are "combat shotguns" and "insurgency-counterinsurgency" type firearms having special military application in Category I. Muzzle-loading (blackpowder) firearms and bayonets have been deleted from Category I.

Procedures for becoming a Registered Importer. The procedures to register as an importer have not changed. However, the fees have been increased to conform to the fees charged to register as a manufacturer or exporter under the ITAR. This fee increase is the first since 1968. Additionally, refunds will be considered at the written request of the importer prior to the beginning of any year for which a refund is claimed.

Procedures for Filing ATF Form 6A. The procedures for filing ATF Form 6A, Release and Receipt of Firearms, Ammunition and Implements of War, are changed to require that the U.S. Customs officer and the importer return a copy to the address specified on the form instead of to the Regional Director (Compliance).

Restrictive Countries. The Department of State revised the list of countries or areas for which licenses and other approvals for shipments of defense articles and services will be denied. The list of countries or areas for which import restrictions apply in § 47.52 has been revised to conform to the Department of State list. Additionally, the U.S. maintains an arms embargo against South Africa pursuant to United Nations Security Council Resolution 418 of November 4, 1977. Exports of items covered by this embargo are consequently prohibited by the Department of State pursuant to the International Traffic in Arms Regulations (22 CFR 126.1). On December 13, 1984, the United States voted in favor of Security Council Resolution 558 regarding the import of arms, ammunition, and military vehicles produced in South Africa. The Department of State has confirmed that imports covered by this embargo which are subject to the import jurisdiction of the Office of Munitions Control (e.g., temporary imports) are also prohibited pursuant to 22 CFR 126.1. In addition, on September 9, 1985, the President signed Executive Order 12532 prohibiting trade and certain other transactions involving South Africa. Category XXII has been added to restrict the importation of defense articles, and technical data relating to defense articles, from South Africa. Finally, the United Nations import embargo on materials originating in Southern Rhodesia is no longer in force, and consequently an import embargo on items originating in Southern Rhodesia contained in § 47.52(c) is repealed.

Exemptions from Canada. The import permit exemption for articles in Categories I, II, III and IV coming from Canada has been eliminated. Import permits for these articles (except for certain components, parts and accessories) are required under Parts 178 and 179. This change will eliminate the inconsistency between the regulations and the confusion as to which components, parts and accessories require an import permit.

Administrative Procedure Act

Under § 47.54, the functions conferred under section 38 of the Arms Export Control Act of 1976 are excluded from the operation of Chapter 5 (Administrative Procedure) of Title 5, United States Code, with respect to Rule Making and Adjudicating. Such functions are concerned with "a military or foreign affairs function of the United States." Accordingly, this regulation may be adopted without prior publication of a notice of proposed rulemaking or opportunity for hearing.

Drafting Information

The principal authors of this final rule are Lonnie Muncy and Teri Byers, Firearms and Explosives Imports Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 47

Administrative practice and procedures, Arms control, Arms and munitions, Authority delegations, Customs duties and inspection, Imports, Penalties, Reporting requirements.

Compliance with Executive Order 12291

This document is not subject to Executive Order 12291 of February 17, 1981 (46 FR 13193 (1981)) because it concerns a military or foreign affairs function of the United States.

Paperwork Reduction Act

The requirements to collect information contained in this final rule have been reviewed and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C., Chapter 35.

Forms

This chart displays the control numbers assigned to information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Section where identified	Current OMB control No.
§ 47.30(b)	1512-0021
§ 47.32(b)	1512-0021
§ 47.33	1512-0021
§ 47.45	1512-0017
§ 47.48	1512-0019
§ 47.54	0925-0064

Regulatory Flexibility Act

Because a notice of proposed rulemaking is not required for this final rule under 5 U.S.C. 553(b), the provisions of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1165, 5 U.S.C. 601 *et seq.*) relating to the preparation of a regulatory flexibility analysis are not applicable to this final rule.

Authority and Issuance

Paragraph 1. The authority citation for Part 47 continues to read as follows:

Authority: Section 38, Pub. L. 94-329, 90 Stat. 744 (22 U.S.C. 2778); 44 U.S.C. 3504(h).

§ 47.1 [Amended]

Par. 2. Section 47.1 is amended by replacing "section 414 of the Mutual Security Act of 1954" with "Section 38, Arms Export Control Act of 1976".

Par. 3. Section 47.2 is revised by deleting paragraph (b) pertaining to the Panama Canal Zone, and redesignating paragraphs (c) and (d) as (b) and (c); deleting from paragraph (c) the phrase ". . . coming into the Panama Canal Zone and to importations of all List articles . . .", and adding the words "U.S. Munitions Import" before the word "List" in the second sentence of paragraph (c); in paragraph (d) replacing "the Mutual Security Act of 1954" with "Section 38, Arms Export Control Act of 1976"; and replacing "26 CFR" with "27 CFR" in all paragraphs. The section is revised to read as follows:

§ 47.2 Relation to other laws and regulations.

(a) All of those items on the U.S. Munitions Import List (see § 47.21) which are "firearms" or "ammunition" as defined in 18 U.S.C. 921(a) are subject to the interstate and foreign commerce controls contained in Chapter 44 of Title 18 U.S.C. and 27 CFR Part 178 and if they are "firearms" within the definition set out in 26 U.S.C. 5845(a) are also subject to the provisions of 27 CFR Part 179. Any person engaged in the business of importing firearms or ammunition as defined in 18 U.S.C. 921(a) must obtain a license under the provisions of 27 CFR Part 178, and if he imports firearms which fall within the definition of 26 U.S.C. 5845(a) must also register and pay special tax pursuant to the provisions of 27 CFR Part 179. Such licensing, registration and special tax requirements are in addition to registration under Subpart D of this part.

(b) The permit procedures of Subpart E of this part are applicable to all importations of articles on the U.S. Munitions Import List not subject to controls under 27 CFR Part 178 or 179. U.S. Munitions Import List articles subject to controls under 27 CFR Part 178 or 27 CFR Part 179 are subject to the import permit procedures of those regulations if imported into the United States (within the meaning of 27 CFR Parts 178 and 179).

(c) Articles on the U.S. Munitions Import List imported for the United States or any State or political subdivision thereof are exempt from the import controls of 27 CFR Part 178 but are not exempt from control under Section 38, Arms Export Control Act of 1976, unless imported by the United States or any agency thereof. All such importations not imported by the United States or any agency thereof shall be subject to the import permit procedures of Subpart E of this part.

Par. 4. Section 47.11 is amended by adding the definitions of "Defense articles" and Defense services" and by revising the terms "Firearms" and "United States" to read as follows:

§ 47.11 Meaning of terms.

* * * * *

Defense articles. Any item designated in § 47.21 or § 47.22. This term includes models, mockups, and other such items which reveal technical data directly relating to § 47.21 or § 47.22. For purposes of Category XXII, any item enumerated on the U.S. Munitions List (22 CFR Part 121).

Defense services. (a) the furnishing of assistance, including training, to foreign persons in the design, engineering, development, production, processing, manufacture, use, operation, overhaul, repair, maintenance, modification, or reconstruction of defense articles, whether in the United States or abroad; or

(b) the furnishing to foreign persons of any technical data, whether in the United States or abroad.

* * * * *

Firearms. a weapon, and all components and parts therefor, not over .50 caliber which will or is designed to or may be readily converted to expel a projectile by the action of an explosive, but shall not include BB and pellet guns, and muzzle loading (black powder) firearms (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) or firearms covered by Category I[a] established to have been manufactured in or before 1898.

* * * * *

United States. When used in the geographical sense, includes the several States, the Commonwealth of Puerto Rico, the insular possessions of the United States, the District of Columbia, and any territory over which the United States exercises any powers of administration, legislation, and jurisdiction.

* * * * *

Par. 7. Section 47.21 is revised to read as follows:

§ 47.21 The U.S. Munitions Import List.

The U.S. Munitions List compiled by the Department of State, Office of Munitions Control, and published at 22 CFR 121.1, with the deletions indicated, has been adopted as an enumeration of the defense articles subject to controls under this part. The expurgated list, set out below, shall, for the purposes of this part, be known as the U.S. Munitions Import List:

The U.S. Munitions Import List

Category I—Firearms

(a) Nonautomatic and semiautomatic firearms, to caliber .50 inclusive, combat shotguns, and shotguns with barrels less than 18 inches in length, and all components and parts for such firearms.

(b) Automatic firearms and all components and parts for such firearms to caliber .50 inclusive.

(c) Insurgency-counterinsurgency type firearms of other weapons having a special military application (e.g. close assault weapons systems) regardless of caliber and all components and parts for such firearms.

(d) Firearms silencers and suppressors, including flash suppressors.

(e) Riflescopes manufactured to military specifications and specifically designed or modified components therefor.

Note: Rifles, carbines, revolvers, and pistols, to caliber .50 inclusive, combat shotguns, and shotguns with barrels less than 18 inches in length are included under Category I(a). Machineguns, submachineguns, machine pistols and fully automatic rifles to caliber .50 inclusive are included under Category I(b).

Category II—Artillery Projectors

(a) Guns over caliber .50, howitzers, mortars, and recoilless rifles.

(b) Military flamethrowers and projectors.

(c) Components, parts, accessories, and attachments for the articles in paragraphs (a) and (b) of this category, including but not limited to mounts and carriages for these articles.

Category III—Ammunition

(a) Ammunition for the arms in Categories I and II of this section.

(b) Components, parts, accessories, and attachments for articles in paragraph (a) of this category, including but not limited to cartridge cases, powder bags, bullets, jackets, cores, shells (excluding shotgun shells), projectiles, boosters, fuzes and components therefor, primers, and other detonating devices for such ammunition.

(c) Ammunition belting and linking machines.

(d) Ammunition manufacturing machines and ammunition loading machines (except handloading ones).

Note: Cartridge and shell casings are included under Category III unless, prior to their importation, they have been rendered useless beyond the possibility of restoration for use as a cartridge or shell casing by means of heating, flame treatment, mangling, crushing, cutting, or popping.

Category IV—Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs and Mines

(a) Rockets (including but not limited to meteorological and other sounding rockets), bombs, grenades, torpedoes, depth charges, land and naval mines, as well as launchers for such defense articles, and demolition blocks and blasting caps.

(b) Launch vehicles and missile and anti-missile systems including but not limited to guided, tactical and strategic missiles, launchers, and systems.

(c) Apparatus, devices, and materials for the handling, control, activation, monitoring, detection, protection, discharge, or detonation of the articles in paragraphs (a) and (b) of this category. Articles in this category include, but are not limited to, the following: Fuzes and components for the items in this category, bomb racks and shackles, bomb shackle release units, bomb ejectors, torpedo tubes, torpedo and guided missile boosters, guidance system equipment and parts, launching racks and projectors, pistols (exploders), igniters, fuze arming devices, intervalometers, guided missile launchers and specialized handling equipment, and hardened missile launching facilities.

(d) Missile and space vehicle powerplants.

(e) Military explosive excavating devices.

(f) Ablative materials fabricated or semifabricated from advanced composites (e.g., silica, graphite, carbon, carbon/carbon, and boron filaments) for the articles in this category that are derived directly from or specifically developed or modified for defense articles.

(g) Non/nuclear warheads for rockets and guided missiles.

(h) All specifically designed components or modified components, parts, accessories, attachments, and associated equipment for the articles in this category.

Note: Military demolition blocks and blasting caps referred to in Category IV(a) do not include the following articles:

(a) Electric squibs.

(b) No. 6 and No. 8 blasting caps, including electric ones.

(c) Delay electric blasting caps (including No. 6 and No. 8 millisecond ones).

(d) Seismograph electric blasting caps (including SSS, Static-Master, Vibrocap SR, and SEISMO SR).

(e) Oil well perforating devices.

Note: Category V of "Munitions List" deleted as inapplicable to imports.

Category VI—Vessels of War and Special Naval Equipment

(a) Warships, amphibious warfare vessels, landing craft, mine warfare vessels, patrol vessels, auxiliary vessels and service craft, experimental types of naval ships and any vessels specifically designed or modified for military purposes.

(b) Turrets and gun mounts, arresting gear, special weapons systems, protective systems, submarine storage batteries, catapults and other components, parts, attachments, and accessories specifically designed or modified for combatant vessels.

(c) Mine sweeping equipment, components, parts, attachments and accessories specifically designed or modified therefor.

(d) Harbor entrance detection devices (magnetic, pressure, and acoustic ones) and controls and components therefor.

(e) Naval nuclear propulsion plants, their land prototypes and special facilities for their construction, support and maintenance. This includes any machinery, device, component, or equipment specifically developed or designed or modified for use in such plants or facilities.

Note: The term "vessels of war" includes, but is not limited to the following:

(a) Combatant vessels:

(1) Warships (including nuclear-powered versions):

(i) Aircraft carriers (CV, CVN)

(ii) Battleships (BB)

(iii) Cruisers (CA, CG, CGN)

(iv) Destroyers (DD, DDG)

(v) Frigates (FF, FFG)

(vi) Submarines (SS, SSN, SSBN, SSG, SSAG).

(2) Other Combatant Classifications:

(i) Patrol Combatants (PC, PHM)

(ii) Amphibious Helicopter/Landing Craft Carriers (LHA, LPD, LPH)

(iii) Amphibious Landing Craft Carriers (LKA, LPA, LSD, LST)

(iv) Amphibious Command Ships (LCC)

(v) Mine Warfare Ships (MSO).

(b) Auxiliaries:

(1) Mobile Logistics Support:

(i) Under way Replenishment (AD, AF, AFS, AO, AOE, AOR)

(ii) Material Support (AD, AR, AS).

(2) Support Ships:

(i) Fleet Support Ships (ARS, ASR, ATA, ATF, ATS)

(ii) Other Auxiliaries (AG, ACDS, AGF, AGM, AGOR, AGOS, AGS, AH, AK, AKR, AOG, AOT, AP, APB, ARC, ARL, AVM, AVT).

(c) Combatant Craft:

(1) Patrol Craft:

(i) Coastal Patrol Combatants (PB, PCF, PCH, PTF)

(ii) River, Roadstead Craft (ATC, PBR).

(2) Amphibious Warfare Craft:

(i) Landing Craft (AALC, LCAC, LCM, LCPL, LCPR, LCU, LWT, SLWT)

(ii) Special Warfare Craft (LSSC, MSSC, SDV, SWCL, SWCM).

(3) Mine Warfare Craft:

(i) Mine Countermeasures Craft (MSB, MSD, MSI, MSM, MSR).

(d) Support and Service Craft:

(1) Tugs (YTB, YTL, YTM)

(2) Tankers (YO, YOC, YW)

(3) Lighters (YC, YCF, YCV, YF, YFN, YFNB, YFNX, YFR, YFRN, YFU, YG, YGN, YOGN, YON, YOS, YSR, YWN)

(4) Floating Dry Docks (AFDB, AFDL, AFDM, ARD, ARDM, YFD)

(5) Miscellaneous (APL, DSRV, DSV, IX, NR, YAG, YD, YDT, YFB, YFND, YFP, YFRT, YHLC, YM, YNG, YP, YPD, YR, YRB, YRBM, YRDH, YRDM, YRR, YRST, YSD).

(e) Coast Guard Patrol and Service Vessels and Craft:

(1) Coast Guard Cutters (CGC, WHEC, WMEC)

(2) Patrol Craft (WPB)

(3) Icebreakers (WAGB)

(4) Oceanography Vessels (WAGO)

(5) Special Vessels (WIX)

(6) Buoy Tenders (WLB, WLM, WLI, WLR, WLIC)

(7) Tugs (WYTM, WYTL)

(8) Light Ships (WLV).

Category VII—Tanks and Military Vehicles

(a) Military type armed or armored vehicles, military railway trains, and vehicles specifically designed or modified to accommodate mountings for arms or other specialized military equipment or fitted with such items.

(b) Military tanks, combat engineer vehicles, bridge launching vehicles, halftracks and gun carriers.

(c) Self-propelled guns and howitzers.

Note: Category VII (d) and (e) of "Munitions List" deleted as inapplicable to imports.

(f) Amphibious vehicles.

(g) Engines specifically designed or modified for the vehicles in paragraphs (a), (b), (c), and (f) of this category.

(h) All specifically designed or modified components and parts, accessories, attachments, and associated equipment for the articles in this category, including but not limited to military bridging and deep water fording kits.

Note: An "amphibious vehicle" in Category VII(f) is an automotive vehicle or chassis which embodies all-wheel drive, which is equipped to meet special military requirements, and which has sealed electrical systems and adaptation features for deep water fording.

Category VIII—Aircraft, Spacecraft, and Associated Equipment

(a) Aircraft, including but not limited to helicopters, non-expensive balloons, drones and lighter-than-air aircraft, which are specifically designed, modified, or equipped for military purposes. This includes but is not limited to the following military purposes: gunnery, bombing, rocket or missile launching, electronic and other surveillance, reconnaissance, refueling, aerial mapping, military liaison, cargo carrying or dropping, personnel dropping, airborne warning and control, and military training.

Note: Category VIII (b) through (j) and Categories IX, X, XI, XII and XIII of "Munitions List" deleted as inapplicable to imports.

Note: In Category VIII, "aircraft" means aircraft designed, modified, or equipped for a military purpose, including aircraft described as "demilitarized." All aircraft bearing an original military designation are included in Category VIII. However, the following aircraft are not so included so long as they have not been specifically equipped, reequipped, or modified for military operations:

(a) Cargo aircraft bearing "C" designations and numbered C-45 through C-118 inclusive, and C-121 through C-125 inclusive, and C-131, using reciprocating engines only.

(b) Trainer aircraft bearing "T" designations and using reciprocating engines or turboprop engines with less than 600 horsepower (s.h.p.).

(c) Utility aircraft bearing "U" designations and using reciprocating engines only.

(d) All liaison aircraft bearing an "L" designation.

(e) All observation aircraft bearing "O" designations and using reciprocating engines.

Category XIV—Toxicological Agents and Equipment and Radiological Equipment

(a) Chemical agents, including but not limited to lung irritants, vesicants, lachrymators, and tear gases (except tear gas formulations containing 1% or less CN or CS), sternutators and irritant smoke, and nerve gases and incapacitating agents.

(b) Biological agents.

(c) Equipment for dissemination, detection, and identification of, and defense against, the articles in paragraphs (a) and (b) of this category.

(d) Nuclear radiation detection and measuring devices manufactured to military specification.

(e) Components, parts, accessories, attachments, and associated equipment specifically designed or modified for the articles in paragraphs (c) and (d) of this category.

Note: A chemical agent in Category XIV(a) is a substance having military application which by its ordinary and direct chemical action produces a powerful physiological effect. The term "chemical agent" includes, but is not limited to, the following chemical compounds:

(a) Lung irritants:
(1) Diphosgene (DP).
(2) Fluorine (but not fluorene).
(3) Trichloronitro methane (chloropicrin PS).
(b) Vesicants:
(1) B-Chlorovinyldichloroarsine (Lewisite, L).
(2) Bis(dichlorethyl) sulphide (Mustard Gas, HD or H).
(3) Ethyldichloroarsine (ED).
(4) Methyldichloroarsine (MD).
(c) Lachrymators and tear gases:
(1) A-Bromobenzyl cyanide (BBC).
(2) Chloroacetophenone (CN).
(3) Dibromodimethyl ether.
(4) Dichlorodimethyl ether (CICI).
(5) Ethyldibromoarsine.
(6) Phenylcarbylamine chloride.
(7) Tear gas solutions (CNB and CNS).
(8) Tear gas orthochlorobenzalmalononitrile (CS).
(d) Sternutators and irritant smokes:
(1) Diphenylamine chloroarsine (Adamsite, DM).
(2) Diphenylchloroarsine (BA).
(3) Liquid pepper.
(e) Nerve agents, gases, and aerosols. These are toxic compounds which affect the nervous system, such as:
(1) Dimethylaminoethoxycyanophosphine oxide (GA).
(2) Methylisopropoxyfluorophosphine oxide (GB).
(3) Methylpinacolyloxyfluorophosphine oxide (GD).
(f) Antiplant chemicals, such as: Butyl 2-chloro-4 fluorophenoxyacetate (LNF).

Category XV—[Reserved]

Category XVI—Nuclear Weapons Design and Test Equipment

(a) Any article, material, equipment, or device, which is specifically designed or modified for use in the design, development, or fabrication of nuclear weapons or nuclear explosive devices.

(b) Any article, material, equipment, or device, which is specifically designed or modified for use in the devising, carrying out, or evaluating of nuclear weapons tests or any other nuclear explosions, except such items as are in normal commercial use for other purposes.

Note: Categories XVII, XVIII, and XIX of "Munitions List" deleted as inapplicable to imports.

Category XX—Submersible Vessels, Oceanographic and Associated Equipment

(a) Submersible vessels, manned and unmanned, designed or modified for military purposes or having independent capability to maneuver vertically or horizontally at depths below 1,000 feet, or powered by nuclear propulsion plants.

(b) Submersible vessels, manned or unmanned, designed or modified in whole or in part from technology developed by or for the U.S. Armed Forces.

(c) Any of the articles in Category VI and elsewhere in this part specifically designed or modified for use with submersible vessels, and oceanographic or associated equipment assigned a military designation.

(d) Equipment, components, parts, accessories, and attachments specifically designed for any of the articles in paragraphs (a) and (b) of this category.

Category XXI—Miscellaneous Articles

Any article not specifically enumerated in the other categories of the U.S. Munitions List which has substantial military applicability and which has been specifically designed or modified for military purposes. The decision on whether any article may be included in this category shall be made by the Director, Office of Munitions Control, Department of State, with the concurrence of the Department of Defense.

Category XXII—South Africa

(a) Defense articles enumerated on the U.S. Munitions List (22 CFR Part 121).

(b) Technical data relating to defense articles enumerated on the U.S. Munitions List.

Note: This category is applicable only to South Africa.

Note: "Technical data" means, for purposes of this category:

(1) Classified information relating to defense articles and defense services;

(2) Information covered by an invention secrecy order;

(3) Information which is directly related to the design, engineering, development, production, processing, manufacture, use, operation, overhaul, repair, maintenance, modification, or reconstruction of defense articles. This includes, for example, information in the form of blueprints, drawings, photographs, plans, instructions, computer software and documentation. This also includes information which advances the state of the art of articles on the U.S. Munitions List. This does not include information concerning general scientific, mathematical or engineering principles.

Par. 6. Section 47.22 is revised by changing the definition of forgings, castings, and machined bodies. The section is revised to read as follows:

§ 47.22 Forgings, castings, and machined bodies.

Articles on the U.S. Munitions Import List include articles in a partially completed state (such as forgings, castings, extrusions, and machined bodies) which have reached a stage in manufacture where they are clearly identifiable as defense articles. If the end-item is an article on the U.S. Munitions Import List, (including components, accessories, attachments and parts) then the particular forging, casting, extrusion, machined body, etc., is considered a defense article subject to

the controls of this part, except for such items as are in normal commercial use.

§ 47.31 [Amended]

Par. 7. Section 47.31 is amended by replacing "Import List" with "U.S. Munitions Import List".

Par. 8. Section 47.32 is revised to change the heading of the section; to increase the registration fees in paragraph (b); to amend the procedures for refund of fees paid, and replace "Imports List" with "U.S. Munitions Import List" in paragraph (c); and to add the Office of Management and Budget control number for Form 4587 at the end of the section.

Section 47.32 is amended by revising paragraphs (b) and (c) and adding the OMB control number to the end of the section to read as follows:

§ 47.32 Application for registration and refund of fee.

* * * * *

(b) Registration may be effected for periods of from 1 to 5 years at the option of the registrant by identifying on Form 4587 the period of registration desired. The registration fees are as follows:

1 year	$250
2 years	500
3 years	700
4 years	850
5 years	1,000

(c) Fees paid in advance for whole future years of a multiple year registration will be refunded upon request if the registrant ceases to engage in importing articles on the U.S. Munitions Import List. A request for a refund must be submitted to the Director, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, Attention: Firearms and Explosives Imports Branch, prior to the beginning of any year for which a refund is claimed.

(Approved by the Office of Management and Budget under control number 1512-0021)

Par. 9. Section 47.33 is amended to add the Office of Management and Budget control number for Form 4587 at the end of the section to read as follows:

§ 47.33 Notification of changes in information furnished by registrants.

* * * * *

(Approved by the Office of Management and Budget under control number 1512-0021)

§ 47.34 [Amended]

Par. 10. Section 47.34 is amended by replacing "26 CFR" with "27 CFR" in paragraph (a); and replacing "Import List" with "U.S. Munitions Import List" in paragraph (b).

Par. 11. The heading of Subpart E is revised by replacing "Importations Other Than Those Subject to Import Controls Under 26 CFR Parts 178 and 179" with "Permits". The subpart heading is revised to read as follows:

* * * * *

Subpart E—Permits

* * * * *

Par. 12. Section 47.41 is revised by deleting paragraph (b) pertaining to the Panama Canal Zone and redesignating paragraphs (c) and (d) as (b) and (c); replacing "26 CFR" with "27 CFR", and replacing "Imports List" with "U.S. Munitions Import List" in paragraphs (a) through (c); and adding additional categories which are not exempt from import controls in paragraph (c). The section is revised to read as follows:

§ 47.41 Permit requirement.

(a) Articles on the U.S. Munitions Import List not subject to import control under 27 CFR Parts 178 and 179 shall not be imported into the United States except pursuant to a permit under this subpart issued by the Director.

(b) Articles on the U.S. Munitions Import List intended for the United States or any State or political subdivision thereof, or the District of Columbia, which are exempt from import controls of 27 CFR 178.115 shall not be imported into the United States, except by the United States or agency thereof, without first obtaining a permit issued by the Director under this subpart.

(c) A permit is not required for the importation of (1) the U.S. Munitions Import List articles from Canada not subject to the import controls of 27 CFR Part 178 or 179, except articles enumerated in Categories I, II, III, IV, VI(e), VIII(a), XVI, and XX; and nuclear weapons strategic delivery systems and all specifically designed components, parts, accessories, attachments, and associated equipment thereof (see Category XX); or (2) minor components and parts for Category I(a) firearms, except barrels, cylinders, receivers (frames) or complete breech mechanisms, when the total value does not exceed $500 wholesale in any single transaction.

Par. 13. Section 47.42 is revised by adding the phrase "Part I" after the phrase "Form 6"; and to add the Office of Management and Budget control number for Form 6 Part I at the end of the section. The section is revised to read as follows:

§ 47.42 Application for permit.

Persons required to obtain a permit as provided in § 47.41 shall file a Form 6 Part I, in triplicate, with the Director. On approval of the application by the Director, he will return the original to the applicant. Such approved application will serve as the permit.

(Approved by the Office of Management and Budget under control number 1512-0017)

§ 47.44 [Amended]

Par. 14. Section 47.44(a) is amended by replacing "section 414 of the Mutual Security Act of 1954" with "Section 38, Arms Export Control Act of 1976".

Par. 15. Section 47.45 is revised to change the procedure for filing Form 6A with the Director; replacing "regional regulatory administrator" with "Director"; and to add the Office of Management and Budget control number for Form 6A at the end of the section. The section is revised to read as follows:

§ 47.45 Importation.

(a) Articles subject to the import permit procedures of this subpart imported into the United States may be released from Customs custody to the person authorized to import same upon his showing that he has a permit from the Director for the importation of the article or articles to be released. In obtaining the release from Customs custody of an article imported pursuant to permit, the permit holder shall prepare Form 6A, in duplicate, and furnish the original and copy to the Customs officer releasing the article. The Customs officer shall, after certification, forward the original Form 6A to the address specified on the form.

(b) Within 15 days of the date of their release from Customs custody, the importer of the articles released shall forward to the address specified on the form a copy of Form 6A on which shall be reported any error or discrepancy appearing on the Form 6A certified by Customs. (Approved by the Office of Management and Budget under control number 1512-0019)

§ 47.46 [Amended]

Par. 16. Section 47.46 is amended to add the phrase "under this part" at the end of the first sentence.

Par. 17. Section 47.51 is revised to replace "Form FC-626/ATF 4522" with "Form ITA-645P/ATF-4522/DSP53"; replace "Import List" with "U.S. Munitions Import List"; replace "Delivery Verification (Form FC-908)" with "Delivery Verification Certificate

(U.S. Department of Commerce Form ITA-647P)"; and to add the Office of Management and Budget control number for Form 4522 at the end of the section. The section is revised to read as follows:

§ 47.51 Import certification and delivery verification.

Pursuant to agreement with the United States, certain foreign countries are entitled to request certification of legality of importation of articles on the U.S. Munitions Import List. Upon request of a foreign government, the Director will certify the importation, on Form ITA-645P/ATF-4522/DSP53, for the U.S. importer. Normally, the U.S. importer will submit this form to the Director at the time he applies for an import permit. This document will serve as evidence to the government of the exporting company that the U.S. importer has complied with import regulations of the U.S. Government and is prohibited from diverting, transshipping, or reexporting the material described therein without the approval of the U.S. Government. Foreign governments may also require documentation attesting to the delivery of the material into the United States. When such delivery certification is requested by a foreign government, the U.S. importer may obtain directly from the U.S. District Director of Customs the authenticated Delivery Verification Certificate (U.S. Department of Commerce Form ITA-647P) for this purpose.

[Approved by the Office of Management and Budget under control number 0625-0094]

Par. 18. Section 47.52 is revised to reflect the addition and deletion of certain restrictive countries in paragraph (a) and to revise paragraph (b) and (c).

Section 47.52 is amended by revising paragraphs (a)–(c) to read as follows:

§ 47.52 Import restrictions applicable to certain countries.

(a) It is the policy of the United States to deny licenses and other approvals with respect to defense articles and defense services originating in certain countries or areas. This policy also applies to imports from these countries or areas. This policy applies to Albania, Bulgaria, Cuba, Czechoslovakia, East Germany, Estonia, Hungary, Kampuchea, Latvia, Lithuania, North Korea, Outer Mongolia, Poland, Rumania, the Soviet Union and Vietnam. This policy applies to countries or areas with respect to which the United States maintains an arms embargo. It also applies when an import would not be in furtherance of world peace and the security and foreign policy of the United States.

(b) A defense article authorized for importation under this part may not be shipped on a vessel, aircraft or other means or conveyance which is owned or operated by, or leased to or from, any of the countries or areas covered by paragraph (a) of this section.

(c) In accordance with United Nations Security Council Resolution 558 of December 13, 1984, and Executive Order 12532 of September 9, 1985, it is the policy of the United States to deny licenses and other approvals with respect to defense articles, and technical data relating to defense articles, from South Africa.

* * * * *

§ 47.53 [Amended]

Par. 19. Section 47.53(b) is amended to replace "Import List" with "U.S. Munitions Import List".

§ 47.54 [Amended]

Par. 20. Section 47.54 is amended to replace "section 414 of the Mutual Security Act of 1954" with "Section 38, Arms Export Control Act of 1976".

§ 47.56 [Amended]

Par. 21. Section 47.56 is amended to replace "28 CFR" with "27 CFR", and "Import List" with "U.S. Munitions Import List".

§ 47.61 [Amended]

Par. 22. Section 47.61 is amended to replace "Import List" with "U.S. Munitions Import List" in paragraphs (a) and (b); and to increase the fine from "$25,000" to "$100,000" in paragraph (c).

§ 47.62 [Amended]

Par. 23. Section 47.62 is amended to increase the fine from "$25,000" to "$100,000".

§ 47.63 [Amended]

Par. 24. Section 47.63 is amended to replace "Import List" with "U.S. Munitions Import List" and to add a citation to the source reference at the end of the section to read as follows: "(18 U.S.C. 545)".

Signed: October 7, 1985.

Stephen E. Higgins,

Director.

Approved: October 8, 1985.

David D. Queen,

Acting Assistant Secretary (Enforcement and Operations).

[FR Doc. 85-24712 Filed 10-17-85; 8:45 am]

BILLING CODE 4810-31-M

ENCLOSURE 2

Office of Foreign Assets Control

31 CFR Part 545

South African Transactions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: On October 1, 1985, the President issued Executive Order No. 12535, imposing a ban on the importation of Krugerrands into the United States. In implementation of that order, the Office of Foreign Assets Control is issuing the South African Transactions Regulations, prohibiting the importation of Krugerrands into the United States.

EFFECTIVE DATE: 12:01 a.m. Eastern Daylight Time, October 11, 1985.

FOR FURTHER INFORMATION CONTACT: Marilyn L. Muench, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220; 202/376-0408.

SUPPLEMENTARY INFORMATION: Since the regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply. Because the regulations are issued with respect to a foreign affairs function of the United States, they are not subject to Executive Order 12291 of February 17, 1981, dealing with Federal Regulations. The information collection requests contained in this document are being submitted to the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Notice of OMB action on these requests will be published in the **Federal Register**.

List of Subjects in 31 CFR Part 545

South Africa, Imports, Krugerrands, Penalties, Reporting and recordkeeping requirements.

Accordingly, 31 CFR Chapter V is amended as set forth below:

New Part 545 is added as follows:

PART 545—SOUTH AFRICA TRANSACTIONS REGULATIONS

Subpart A—Relation of this Part to Other Laws and Regulations

Sec.
545.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

545.201 Prohibition on the importation of Krugerrands.
545.203 Effective date.
545.204 Evasions.

Subpart C—General Definitions

545.301 Krugerrands.
545.302 United States.

Subpart D—Interpretations

Subpart 545.401 Reference to amended sections.
545.402 Effect of amendment of sections of this chapter or of other orders, etc.
545.403 Krugerrand jewelry.

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

545.501 Effect of subsequent license or authorization.
545.502 Exclusion from licenses and authorizations.

Subpart F—Reports

545.601 Required records.
545.602 Reports to be furnished on demand.

Subpart G—Penalties

545.701 Penalties.

Subpart H—Procedures

545.801 Licensing.
545.802 Decisions.
545.803 Amendment, modification, or revocation.
545.804 Rulemaking.
545.805 Delegation by the Secretary of the Treasury.
545.806 Rules governing availability of information.

Subpart I—[Reserved]

Authority: 50 U.S.C. 1701 *et seq.*; E.O. 12535, 50 FR 40325, Oct. 3, 1985.

Subpart A—Relation of this Part to Other Laws and Regulations

§ 545.101 Relation of this part to other laws and regulations.

(a) This part is independent of the other parts of this chapter and all other provisions of law. No license or authorization under another part of this chapter or any other provision of law authorizes any transaction prohibited by this part.

(b) No license or authorization under this part authorizes any transaction prohibited by one of the other parts of this chapter or any other provision of law, or relieves the parties involved from complying with any other applicable laws or regulations.

Subpart B—Prohibitions

§ 545.201 Prohibition on the importation of Krugerrands.

Except as authorized under this part, the importation into the United States of South African Krugerrands is prohibited.

§ 545.203 Effective date.

(a) The effective date of the prohibition in section 545.201 shall be 12:01 a.m. Eastern Daylight Time, October 11, 1985.

§ 545.204 Evasions.

Any transaction for the purpose of, or which has the effect of, evading any of the prohibitions in this part is prohibited.

Subpart C—General Definitions

§ 545.301 Krugerrands.

The term "Krugerrands" includes Krugerrands of all denominations and sizes, and Krugerrands that have been modified, as by addition of a clasp or loop, into items that can be worn as jewelry.

§ 545.302 United States.

The term "United States" means the United States and all territories under the jurisdiction thereof, including the Trust Territory of the Pacific Islands.

Subpart D—Interpretations

§ 545.401 Reference to amended sections.

Reference to any section of this chapter or to any regulation, ruling, order, instruction, direction or license issued pursuant to this chapter shall be deemed to refer to the same as currently amended unless otherwise so specified.

§ 545.402 Effect of amendment of sections of this chapter or of other orders, etc.

Any modification of this chapter or of any regulation, ruling, order, instruction, direction or license issued by the Secretary of the Treasury pursuant to Executive Order No. 12535 shall not, unless otherwise specifically provided, be deemed to affect any act performed or omitted, or any civil or criminal proceeding commenced, prior to such modification, and all penalties, forfeitures, and liabilities under any such provision shall continue and may

nforced as if such modification had been made.

.403 Krugerrand jewelry.

ction 545.201 prohibits the portation into the United States of errands that have been modified, as e addition of a clasp or loop, into e that can be worn as jewelry. For nple, importation of a necklace isting of a Krugerrand mounted on a n would be prohibited. Section 201 does not prohibit the portation into the United States of errand jewelry which was nally imported into the United es prior to October 11, 1985.

part E—Licenses, Authorizations Statements of Licensing Policy

.501 Effect of subsequent licenses or orization.

o license or other authorization ained in this chapter or otherwise ed by or under the authority of the etary of the Treasury pursuant to cutive Order 12535 shall be deemed thorize or validate any transaction ted prior to the issuance thereof, ss such license or other orization specifically so provides.

.502 Exclusion from licenses and orizations.

e Secretary of the Treasury rves the right to exclude any person roperty from the operation of any se or to restrict the applicability eof to any person or property. Such n shall be binding upon all persons iving actual or constructive notice eof.

part F—Reports

.601 Required records.

ery person engaging in any saction subject to this part shall a full and accurate record of each saction in which he engages, uding any transaction effected uant to license or otherwise, and records shall be available for mination for at least two years after ate of such transaction.

.502 Reports to be furnished on and.

ery person is required to furnish r oath, in the form of reports or rwise, at any time as may be ired, complete information relative y transaction subject to this part, ardless of whether such transaction fected pursuant to license or rwise. Such reports may be required clude the production of any books ccount, contracts, letters, and other rs connected with any transaction in the custody or control of the persons required to make such reports. Reports with respect to transactions may be required either before or after such transactions are completed. The Secretary of the Treasury may, through any person or agency, conduct investigations, hold hearings, administer oaths, examine witnesses, receive evidence, take depositions, and require by subpoena the attendance and testimony of witnesses and the production of all books, papers, and documents relating to any matter under investigation.

Subpart G—Penalties

§ 545.701 Penalties.

(a) A civil penalty of not to exceed $10,000 may be imposed on any person who violates any license, order, or regulation issued under this title.

(b) Whoever willfully violates any license, order, or regulation issued under this title shall, upon conviction, be fined not more than $50,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both.

(50 U.S.C. 1705)

(c) Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representation or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(18 U.S.C. 1001)

Subpart H—Procedures

§ 545.801 Licensing.

(a) *General licenses.* [Reserved]

(b) *Specific licenses.* Transactions prohibited under subpart B may be effected only under specific license.

(1) The specific licensing activities of the Office of Foreign Assets Control are performed by its Washington Office and by the Foreign Assets Control Division of the Federal Reserve Bank of New York.

(2) *Applications for specific licenses.* Applications for specific licenses to engage in any transaction prohibited under this part are to be filed in duplicate with the Federal Reserve Bank of New York, Foreign Assets Control Division, 33 Liberty Street, New York, NY 10045. Any person having an interest in a transaction or proposed transaction may file an application for a license authorizing such transaction, and there is no requirement that any other person having an interest in such transaction shall or should join in making or filing such application.

(3) *Information to be supplied.* The applicant must supply all information specified by the respective forms and instructions. Such documents as may be relevant shall be attached to each application except that documents previously filed with the Office of Foreign Assets Control may, where appropriate, be incorporated by reference. Applicants may be required to furnish such further information as is deemed necessary to a proper determination by the Office of Foreign Assets Control. Failure to furnish necessary information will not be excused because of any provision of South African law. If an applicant or other party in interest desires to present additional information or discuss or argue the application, he may do so at any time before or after decision. Arrangements for oral presentation should be made with the Office of Foreign Assets Control.

(4) *Effect of denial.* The denial of a license does not preclude the reopening of an application or the filing of a further application. The applicant or any other party in interest may at any time request explanation of the reasons for a denial by correspondence or personal interview.

(5) *Reports under specific licenses.* As a condition of the issuance of any license, the licensee may be required to file reports with respect to the transaction covered by the license, in such form and at such times and places as may be prescribed in the license or otherwise.

(6) *Issuance of license.* Licenses will be issued by the Office of Foreign Assets Control acting on behalf of the Secretary of the Treasury or by the Federal Reserve Bank of New York, acting in accordance with such regulations, rulings, and instructions as the Secretary of the Treasury or the Office of Foreign Assets Control may from time to time prescribe, or licenses may be issued by the Secretary of the Treasury acting directly or through a designated person, agency, or instrumentality.

§ 545.802 Decisions.

The Office of Foreign Assets Control or the Federal Reserve Bank of New

York will advise each applicant of the decision respecting filed applications. The decision of the Office of Foreign Assets Control with respect to an application shall constitute a final agency action.

§ 545.803 Amendment, modification, or revocation.

The provisions of this part and any rulings, licenses, authorizations, instructions, orders or forms issued hereunder may be amended, modified, or revoked at any time.

§ 545.804 Rulemaking.

(a) All rules and other public documents are issued by the Secretary of the Treasury upon recommendation of the Director of the Office of Foreign Assets Control. Except to the extent that there is involved any military, naval, or foreign affairs function of the United States or any matter relating to the agency management or personnel or to public property, loans, grants, benefits, or contracts, and except when interpretive rules, general statements of policy, or rules of agency organization, practice, or procedure are involved, or when notice and public procedure are impracticable, unnecessary, or contrary to the public interest, interested persons will be afforded an opportunity to participate in rulemaking through the submission of written data, views, or arguments, with oral presentation in the discretion of the Director. In general, rulemaking by the Office of Foreign Assets Control involves foreign affairs functions of the United States. Wherever possible, however, it is the practice to hold informal consultations with interested groups or persons before the issuance of any rule or other public document.

(b) Any interested person may petition the Director of the Office of Foreign Assets Control in writing for the issuance, amendment or revocation of any rule.

§ 545.805 Delegation by the Secretary of the Treasury.

Any action which the Secretary of the Treasury is authorized to take pursuant to Executive Order 12535 may be taken by the Director of the Office of Foreign Assets Control, or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

§ 545.806 Rules governing availability of information.

(a) The records of the Office of Foreign Assets Control which are required by 5 U.S.C. 552 to be made available to the public shall be made available in accordance with the definitions, procedures, payment of fees, and other provisions of the regulations on the disclosure of records of the Office of the Secretary and of other bureaus and offices of the Department issued under 5 U.S.C. 552 and published as part 1 of this Title 31 of the Code of Federal Regulations.

(b) Any form issued for use in connection with this part may be obtained in person from or by writing to the Office of Foreign Assets Control, Treasury Department, Washington, DC 20220, or the Foreign Assets Control Division, Federal Reserve Bank of New York, 33 Liberty Street, New York, NY 10045.

Subpart I—Miscellaneous [Reserved]

Dated: October 9, 1985.

Dennis M. O'Connell,

Director, Office of Foreign Assets Control.

Approved: October 9, 1985.

David D. Queen,

Acting Assistant Secretary Enforcement & Operations.

[FR Doc. 85-24640 Filed 10-10-85; 2:17 pm]

BILLING CODE 4810-21-M

Enclosure 3

DEPARTMENT OF STATE

22 CFR Parts 60, 61, 62, 63, 64 and 65

[50-193]

South Africa and Fair Labor Standards

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: Executive Order 12532 of September 9, 1985 (50 FR 36861) provides that no department or agency of the United States may intercede after December 31, 1985 with any foreign government regarding the export marketing activities of certain U.S. firms operating in South Africa unless they adhere to the fair labor principles stated in the Executive Order. It is the purpose of this proposed rule to implement the fair labor provisions of executive Order 12532.

DATE: Comments should be received no later than December 9, 1985.

ADDRESS: Comments should be sent to Mr. Edward Cummings, Office of the Legal Adviser, Room 6420, Department of State, 2201 C St., N.W., Washington, D.C. 20520. All comments received will be available for public inspection in the Reading Room of the Department of State.

FOR FURTHER INFORMATION CONTACT: Ms. Sue Keogh, Country Officer for South Africa, (202) 632-8433; or Ms. Lynda Clarizio, (202) 632-3738, Office of the Legal Adviser, Department of State.

SUPPLEMENTARY INFORMATION: E.O. 12532 of September 9, 1985 (50 FR 36861) and E.O 12535 of October 1, 1985 (50 FR 40325) prohibit certain transactions involving South Africa. These prohibitions and the other measures directed by the President are designed to encourage peaceful change in South Africa and to express the unequivocal opposition of the United States to the policy and practice of apartheid. They are not designed to harm the nationals or economy of South Africa. Rather, it is the policy of the United States to use its influence in a positive and visible manner in South Africa. One of the means of doing so involves encouraging U.S. firms and institutions in South Africa to take measures to influence change in that country.

Sections 2 and 3 of E.O. 12532 deal with the labor practices of U.S. nationals and their firms in South Africa, as well as the practices of the U.S. diplomatic and consular missions in South Africa. Section 2 praises the efforts of U.S. firms which have voluntarily applied fair labor practices in that country. It states that it is the national policy of the United States to encourage strongly all U.S. firms in South Africa to follow this commendable example. It is the policy of the U.S. to encourage firms to remain in South Africa and to work for change.

The example referred to in the Executive Order has been set primarily by the U.S. firms which have voluntarily subscribed to the Sullivan Code, a set of principles originally proposed in 1977 by the Reverend Leon Sullivan. The majority of U.S. firms in South Africa apply these principles voluntarily. Their labor practices are monitored by a private organization in the U.S.

These firms have set an important example of how to treat workers with dignity despite a system of government that requires severe distinctions based exclusively on race. In light of the unique situation in South Africa, E.O. 12532 provides that the U.S. Government will henceforth not provide certain kinds of assistance to U.S. firms (described in § 60.2) which do not adhere to fair labor standards in that country.

E.O. 12532 contains a list of fair labor principles to which U.S. firms are expected to adhere. E.O. 12532 reflects a policy of encouraging change in South Africa through the labor practices of U.S. firms, and in particular by the application of the principles stated in section 2 of the Executive Order.

The proposed rule defines adherence (§ 61.1) and establishes a reporting system to verify adherence (Part 63). The reporting system contemplates that firms will complete a detailed questionnaire regarding their labor practices on an annual basis, one comparable to that required under the voluntary Sullivan system.

The E.O. requirements apply to U.S. nationals who employ at least 25 persons in South Africa. The proposed rule defines the U.S. nationals who are subject to the reporting requirements of the E.O. (e.g., § 61.5 and § 60.2).

It has been the consistent policy of the U.S. Government to encourage voluntary adherence to the Sullivan Code and this remains the policy of the U.S. The proposed rule is not intended to undercut or affect the highly efficient Sullivan system. The E.O. takes into account the effectiveness and integrity of the Sullivan Code monitoring system. Accordingly, U.S. firms that are *bona fide* participants in the system are exempted from certain reporting requirements established by the proposed rule.

The proposed regulations also take into account the past experience of the United States with respect to the position of the South African Government regarding business and financial reporting requirements of foreign governments, the experience of the Sullivan signatories, and the experience of European Community countries with their codes of conduct.

In particular, section 2(b)(9) of the Export-Import Bank Act of 1945 contains a number of restrictions on Export-Import Bank support for exports to South Africa. For example, no financing may be provided in support of exports to private purchasers in South Africa unless the purchaser has endorsed certain fair labor provisions and has proceeded toward their implementation. These principles are comparable to those specified in E.O. 12532. The Government of South Africa objected to some of the initial U.S. Government reporting requirements established under this provision. This had the effect of preventing the implementation of the reporting requirements. These differences were ultimately resolved. The proposed rule takes into account the objections made in the past by the South African Government regarding the application of the reporting requirements established under the Export-Import Bank Act as well as the fact that the new reporting requirements relate to activities in a foreign country.

Finally, it should be noted that this proposed rule establishes a new and unusual regulatory scheme. The experience of the Department of State in enforcing the final rule could lead to proposals for significant changes in the regulations, and members of the public and the firms regulated are welcomed to provide comments at any time to the Department of State.

These regulations deal with a foreign affairs function of the United States and are thus excluded from the major rule procedures of Executive Order 12291 (46 FR 13193) and the procedures of 5 U.S.C. 553 and 554. The Department of State nonetheless believes that the public should have an opportunity to comment on the proposed regulations before they are promulgated as a final rule. Accordingly, the public is invited to comment on the regulations during the next thirty days.

The collection of information requirements of this rule have been submitted to OMB for review pursuant to § 3504(h) of the Paperwork Reduction Act of 1980. Comments on this matter should be directed to the Office of Information and Regulatory Affairs of OMB, Attention: Ms. Francine Picoult (202) 395–7231.

List of Subjects

22 CFR Part 60

United States investments abroad, Fair labor standards, South Africa.

22 CFR Part 61

United States investments abroad, Fair labor standards, South Africa.

22 CFR Part 62

United States investments abroad, Fair labor standards, South Africa, Reporting and recordkeeping requirements.

22 CFR Part 63

United States investments abroad, Fair labor standards, South Africa.

22 CFR Part 64

United States investments abroad, Fair labor standards, South Africa, Reporting and recordkeeping requirements.

22 CFR Part 65

United States investments abroad, Fair labor standards, South Africa, Exports, Penalties.

Subchapter G (heading) of Chapter I of Title 22, Code of Federal Regulations, is removed and a new Subchapter G is proposed to be added to read as follows:

SUBCHAPTER G—SOUTH AFRICA AND FAIR LABOR STANDARDS

PART 60—PURPOSE OF SCOPE OF APPLICATION

PART 61—DEFINITIONS

PART 62—REGISTRATION

PART 63—GENERAL POLICIES AND REPORTING REQUIREMENTS

PART 64—ADMINISTRATIVE PROVISIONS

PART 65—NON-ADHERENCE AND PENALTIES

Appendix to Subchapter G—Examples of Fair Labor Practices

PART 60—PURPOSE AND SCOPE OF APPLICATION

Sec.
60.1 General.
60.2 Scope of application.

Authority: Sec. 203, International Emergency Economic Powers Act (50 U.S.C. 1701); E.O. 12532, Sep. 9, 1985 (50 FR 36861)

§ 60.1 General.

(a) *General.* Section 2 of Executive Order 12532 of September 9, 1985 (50 FR 36861) provides that it is the policy of the United States to encourage all United States firms in South Africa to adhere to certain fair labor standards. It provides furthermore that no department or agency of the U.S. may intercede with any foreign government regarding the export marketing activities in any country of any national of the U.S. employing more than 25 individuals in South Africa who does not adhere to the principles stated in the Order. It is the purpose of this subchapter to implement these requirements of E.O. 12532.

(b) *Relation to the Voluntary Sullivan System.* It has been the policy of the United States since 1977 to encourage voluntary adherence to the Sullivan Code agreed to by a majority of U.S. business firms that operate in South Africa. The requirements of the voluntary Code exceed those of the E.O. 12532 in certain respects, and the voluntary nature of the code has set an example for all firms in South Africa. The regulations set forth in this subchapter recognize that some U.S. nationals are not willing to subscribe to the Sullivan Code, and these regulations do not require firms to subscribe to the voluntary system. All U.S. nationals described in § 62.2 and § 63.1 are subject to the requirements of this subchapter. Such nationals who are *bona fide* participants in the Sullivan system are exempt from certain reporting requirements in accordance with § 63.1(d).

§ 60.2 Scope of application.

The requirements of this subchapter are applicable to U.S. nationals (defined in Section 61.5) who:

(a) Employ at least 25 individuals in South Africa;

(b) Own or control more than 50 percent of the outstanding voting securities of a foreign subsidiary or other entity that employs at least 25 individuals in South Africa; or

(c) Control in fact any other foreign entity that employs at least 25 individuals in South Africa. Such control consists of the authority or ability of the domestic concern to establish or direct the general policies or day-to-day operations of a foreign subsidiary or entity in South Africa. Such authority or ability will be presumed under the circumstances described below, subject to rebuttal by competent evidence provided to the Department of State at the time of registration (see § 62.1):

(1) The domestic concern identified in (b) beneficially owns or controls (whether directly or indirectly) 25 percent or more of the voting securities of the foreign subsidiary or entity. If no other person owns or controls (whether directly or indirectly) an equal or larger percentage;

(2) The foreign subsidiary or entity is operated by the domestic concern identified in (b) pursuant to the provisions of an exclusive management contract;

(3) A majority of the members of the board of directors of the foreign subsidiary or entity are also members of the comparable governing body of the domestic concern identified in (b);

(4) The domestic concern identified in (b) has the authority to appoint the majority of the members of the board of directors of the foreign subsidiary or entity; or

(5) The domestic concern has the authority to appoint the chief operating officer of the foreign subsidiary or entity.

PART 61—DEFINITIONS

Sec.

61.1 Adherence.
61.2 Fair labor standards.
61.3 Office of Southern African Affairs.
61.4 United States.
61.5 U.S. national.

Authority: Sec. 203, International Emergency Economic Powers Act (50 U.S.C. 1701); E.O. 12532, Sep. 9, 1985 (50 FR 36861).

§ 61.1 Adherence.

For purposes of this subchapter, adherence means (a) agreeing to implement the principles specified in § 61.2 in South Africa, (b) taking good faith measures to implement each of these principles, and (c) reporting accurately to the Department of State on the measures taken to implement the principles in accordance with § 63.1.

§ 61.2 Fair labor standards.

(a) The fair labor standards referred to in this subchapter are as follows:

(1) Desegregating the races in each employment facility;

(2) providing equal employment opportunity for all employees without regard to race or ethnic origin;

(3) Assuring that the pay system in South Africa is applied to all employees without regard to race or ethnic origin;

(4) Establishing a minimum wage and salary structure based on the appropriate local minimum economic level which takes into account the needs of employees and their families.

(5) Increasing by appropriate means the number of persons in managerial, supervisory, administrative, clerical and technical jobs who are disadvantaged by the apartheid system for the purpose of significantly increasing their representation in such jobs;

(6) Taking reasonable steps to improve the quality of employee's lives outside the work environment with respect to housing, transportation, schooling, recreation, and health;

(7) Implementing fair labor practices by recognizing the right of all employees, regardless of racial or other distinctions, to self-organization and to form, join or assist labor organizations, freely and without penalty or reprisal, and recognizing the right to refrain from any such activity.

(b) The supplement to this subchapter contains illustrative examples of the fair practices referred to in this subchapter.

§ 61.3 Office of Southern African Affairs.

"Office of Southern African Affairs" means the Office of Southern African Affairs, Bureau of African Affairs, Department of State, Washington, D.C. 20520.

§ 61.4 United States.

"United States," when used in the geographical sense, includes the several States, the Commonwealth of Puerto Rico, the insular possessions of the United States, and the District of Columbia.

§ 61.5 U.S. national.

For purposes of this subchapter, "U.S. national" means:

(a) Citizens or nationals of the United States or permanent residents of the United States (defined in the Immigration and Nationality Act [8 U.S.C. 1101, § 101(a) 20, 60 Stat. 163]); and

(b) Corporations, partnerships, and other business associations organized under the laws of the United States, any state or territory thereof, or the District of Columbia.

PART 62—REGISTRATION

Sec.

62.1 Registration.
62.2 Notification of changes in information furnished by registrants.
62.3 Maintenance of records by registrants.

Authority: Sec. 203, International Emergency Economic Powers Act (50 U.S.C. 1701); E.O. 12532, Sep. 9, 1985 (50 FR 36861).

§ 62.1 Registration.

Any U.S. national referred to in § 60.2 is required to register with the Department of State and to indicate whether the U.S. national or entity referred to in § 60.2 agrees to implement the principles stated in § 61.2. They may

also indicate whether they are participants in the voluntary Sullivan system. Registration can be accomplished by filing a completed form DSP-X with the Office of Southern African Affairs. Any such national who believes that it should not be required or is unable to report on the fair labor practices of a foreign subsidiary or entity described in § 60.2 (c) of this subchapter should provide a detailed explanation of the reasons. The explanation should be in the form of a letter, and should accompany the completed registration form. A detailed questionnaire on fair labor practices will be provided by the Office of Southern African Affairs on an annual basis to all registrants. No fee is required for registration.

§ 62.2 Notification of changes in information furnished by registrants.

A registered U.S. national must notify the Department of State of any material changes in the information contained in the registration. Examples of material changes include the establishment, acquisition, or sale of a subsidiary or of a foreign affiliate, a merger, a change of location, or engaging in a different kind of business in South Africa. Such information should be provided within 60 days from the date of the material change.

§ 62.3 Maintenance of records by registrants.

(a) A U.S. national who is required to register pursuant to §62.1 must maintain records concerning the fair labor practices employed in South Africa by the U.S. national or any entity referred to in § 6.2 effective January 1, 1988. Such records must be maintained for a period of 3 years.

(b) Records maintained under this section shall be available at all times for inspection by the Director of the Office of Southern African Affairs or a person designated by the Director.

PART 63—GENERAL POLICIES AND REPORTING REQUIREMENTS

Sec.

63.1 General policies.
63.2 Influencing activities outside the workplace.
63.3 State Department review.
63.4 Waiver.

Authority: Sec. 203, International Emergency Economic Powers Act (50 U.S.C. 1701); E.O. 12532, Sep. 9, 1985 (50 FR 36861).

§ 63.1 General policies.

(a) Any U.S. national or entity described in § 60.2 who does not adhere to the fair labor standards stated in § 61.2 of this subchapter shall be ineligible to receive the assistance specified in § 65.1(b).

(b) Any such U.S. national who does not register with the Department of State prior to February 1, 1988, in accordance with § 62.1 shall be ineligible for the assistance specified in § 65.1.

(c) All U.S. nationals subject to the requirements of this subchapter shall provide an annual report to the Department of State describing their implementation of the fair labor principles specified in § 61.2, including implementation by any entity described in § 60.2. They shall do so by submitting a completed questionnaire furnished by the Department of State at the time of registration to the Office of Southern African Affairs. The first report shall be provided no later than February 15, 1987.

(d)(1) Any U.S. national who is a *bona fide* participant in the Sullivan reporting and implementing system is exempt from submitting the questionnaire referred to in subsection (c). "*Bona fide*" participation means (1) subscribing to the Sullivan Code and (2) filing the report required by the Sullivan monitoring mechanism with that organization and (3) receiving a Category I or II standing. *Bona fide* participants are deemed to be adhering to the fair labor standards for purposes of this subchapter. Such U.S. nationals shall be required to file a letter with the Office of Southern African Affairs on an annual basis certifying that they are *bona fide* participants in the Sullivan system. Each such letter shall be provided not later than January 31 of each calander year, commencing on January 31, 1987. Each such letter shall include the following statement:

I certify that [name of firm] is a *bona fide* participant in the Sullivan system for fiscal year [insert], and the firm received a [insert] rating from the Sullivan system for that period.

(2) Any U.S. national participating in the Sullivan system who receives a Category III (A) standing may also use the procedures specified in this subsection. However, such nationals may use this procedure only once after receiving such a rating. If such a national does not receive a Category I or II standing for the next fiscal year, it shall not be deemed to be a *bona fide* participant pursuant to this subsection and must thereafter complete the required State Department questionnaire.

§ 63.2 Influencing activities outside the workplace.

U.S. nationals referred to in subsection § 60.2 are encouraged to take reasonable measures to extend the scope of their influence on activities outside the workplace by measures such as (a) supporting the right of all businesses, regardless of the racial character of their owners or employees, to locate in urban areas; (b) by influencing other companies in South Africa to follow the principles specifed in § 61.2; (c) by supporting the freedom of mobility of all workers, regardless of race, to seek employment opportunities wherever they exist, and (d) by making provision for adequate housing and education for families of employees within the proximity of the employee's place of work.

§ 63.3 State Department review.

(a) The Office of Southern African Affairs shall review each report submitted pursuant to § 63.1(c) to determine whether the U.S. national is adhering to the principles stated in § 61.2.

(b) If the Office of Southern African Affairs concludes that a person is not taking such steps, it shall afford the person thirty days to provide additional written information to the Department of State.

(c) If a U.S. national who was a participant in the Sullivan system does not file the reports required by the Sullivan monitoring system or otherwise fails to meet the standards for continued participation in the Sullivan system, the U.S. national shall immediately inform the Department of State. Such notification should be provided no later than 30 days after receipt of a notification from the Sullivan system that the person is no longer a *bona fide* participant.

§ 63.4 Waiver.

The Director, Office of Southern African Affairs, may make exceptions to the provisions of this subchapter in cases of exceptional or undue hardship or when it is otherwise in the interest of the United States Government.

PART 64—ADMINISTRATIVE PROVISIONS

Sec.

64.1 Administrative procedures.
64.2 Annual report.
64.3 Disclosure of information to the public.

Authority: Sec. 203, International Emergency Economic Powers Act (50 U.S.C. 1701); E.O. 12532, Sep. 9, 1985 (50 FR 36861).

§ 64.1 Administrative procedures

(a) If the Director, Office of Southern African Affairs, concludes that a U.S. national or entity referred to in § 60.2 is not adhering to the principles specified in § 61.2, the Office of Southern African Affairs shall immediately inform the U.S. national concerned and other U.S.

Government agencies by appropriate means.

(b) Any U.S. national who has been the subject of an adverse decision pursuant to subsection (a) shall be entitled to file a written appeal within 30 days of notification of the decision with the Board of Appellate Review of the Department of State. The requirements of Part 7 of subchapter 1 of CFR this title shall be applicable to proceedings before the Board of Appellate Review.

§ 64.2 Annual report.

The Office of Southern African Affairs shall prepare an annual report regarding implementation of Part 63 of this subchapter, which shall be forwarded to other affected U.S. Government agencies and the appropriate standing committees of the United States Congress.

§ 64.3 Disclosure of information to the public.

Subchapter R of this title of CFR contains regulations on the availability to the public of information and records of the Department of State. The provisions of subchapter R apply to such disclosures by the Office of Southern African Affairs.

PART 65—NON-ADHERENCE AND PENALTIES

Sec.
65.1 Denial of export marketing support.
65.2 Civil and criminal penalties.

Authority: Sec. 203, International Emergency Economic Powers Act (50 U.S.C. 1701); E.O. 12532, Sep. 9, 1985 (50 FR 36861).

§ 65.1 Denial of export marketing support.

(a) In accordance with Part 63 of this subchapter, no department or agency of the United States may intercede with any foreign government regarding the export marketing activity in any country of any U.S. national or entity referred to in § 60.2 who does not adhere to the principles stated in § 61.2 with respect to that U.S. national's operations in South Africa.

(b) For purposes of this section, "export marketing activity" includes any contact by U.S. Government personnel with officials of any foreign government, which involves or contemplates any effort to assist in selling a good, service, or technology in a foreign market. The following are examples of the activities prohibited:

(1) Assisting non-complying firms by arranging appointments with foreign government officials relating to the pursuit by the firm of a bid, project, or other commercial activity;

(2) Intervening with a foreign government on behalf of a non-complying firm in pursuit of a bid or project, unless such intervention is necessary to ensure a foreign government's compliance with its obligations, if any, under the Agreement on Government Procurement of April 12, 1979 (T.I.A.S. No. 10403);

(3) Assisting non-complying firms in obtaining end-user or other foreign government certificates or documentation necessary for the issuance of U.S. export licenses;

(4) Taking any action to assist a non-complying firm in selling its products, services or technology with respect to a foreign government, including assistance in making appeals regarding foreign government procedures and practices adversely affecting the firm's ability to gain access to the foreign marketplace;

(5) Participation by non-complying firms in Department of Commerce or certified trade exhibitions and video catalog shows in foreign countries;

(6) Authenticating documents pursuant to Part 131 of Subchapter N of this title with respect to the other activities under this subsection.

(c) The following activities with respect to non-complying firms are not prohibited pursuant to this section of the Executive Order:

(1) Preparing market research for use by more than one company and providing general export information;

(2) Distributing generally available informational publication such as Overseas Business Reports, Foreign Economic Trends, and Business America; and

(3) Multilateral and bilateral, government-to-government trade negotiations to resolve trade issues which may affect non-complying firms.

§ 65.2 Civil and criminal penalties.

(a) This subchapter is promulgated pursuant to the authority of E.O. 12532 and the International Emergency Economic Powers Act (50 U.S.C. 1705) (IEEPA)). Section 206 of this Act provides that:

A civil penalty of not to exceed $10,000 may be imposed on any person who violates any license, order, or regulation issued under this title.

Whoever willfully violates any license, order, or regulation issued under this title shall, upon conviction, be fined not more than $50,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both.

Section 206 of the International Emergency Economic Powers Act is applicable to violations of this subchapter and to any license, ruling, regulation, order, direction, or instruction issued hereunder. These criminal and civil penalties are applicable to failures to comply with the registration and reporting requirements established in this subchapter. However, they are not applicable to failures to adhere to the principles stated in § 61.2.

(b) Attention is also directed to 18 U.S.C. 1001, which provides:

Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statement or representation or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(c) This section does not apply to the financing of exports by the Export-Import Bank to South Africa. Such financing continues to be the subject of the requirements contained in Section 2(b)(9) of the Export-Import Bank Act of 1945, as amended.

Appendix to Subchapter G—Examples of Fair Labor Practices

The following are illustrative examples of the fair labor standards specified in § 61.2.

(1) Desegregating the races in each employment facility:

(a) Removing all race designation signs;

(b) Desegregating all eating, medical, recreation, and work facilities; and

(c) Terminating all regulations which are based on racial discrimination or preference.

(2) Providing equal employment opportunity for all employees without regard to race or ethnic origin:

(a) Assuring that any health, accident, pension, or death benefit plans that are established are nondiscriminatory and open to all employees without regard to race or ethnic origin; and

(b) Implementing equal and nondiscriminatory terms and conditions of employment for all employees, abolishing job restrictions and differential employment criteria which discriminate on the basis of race or ethnic origin.

(3) Assuring that the pay system is applied to all employees without regard to race or ethnic origins:

(a) Assuring that any wage and salary structure that is implemented is applied equally to all employees without regard to race or ethnic origin;

(b) Eliminating any distinctions between hourly and salaried job classifications on the basis of race or ethnic origin; and

(c) Eliminating any differences in seniority and in grade benefits which are based on race or ethnic origin.

(4) Establishing a minimum wage and salary structure based on the appropriate local minimum economic level which takes into account the needs of employees and their families.

(a) Offering a minimum wage or salary structure that is 30 percent or more higher than the most recent University of South Africa Minimum Living Level for a family of 5 or 6 for the area in which the South African subsidiary or affiliate operates; or

(b) Offering a minimum wage or salary that is 30% or more higher than the most recent University of Port Elizabeth Household Subsistence Level for a family of 5 or 6 for the area in which the South African subsidiary or affiliate operates.

(5) Increasing, by appropriate means, the number of persons in managerial, supervisory, administrative, clerical, and technical jobs who are disadvantaged by the apartheid system for the purpose of significantly increasing their representation in such jobs:

(a) Developing training programs that will prepare substantial numbers of persons disadvantaged by apartheid for such jobs as soon as possible, including: (i) Expanding existing programs and forming new programs to train, upgrade, and improve the skills of all categories of employees, including establishing and expanding programs to enable employees to further their education and skills at recognized educational facilities; and (ii) creating on-the-job training programs and facilities to assist employees to advance to higher paying jobs requiring greater skills.

(b) Establishing procedures to assess, identify, and actively recruit employees with potential for further advancement;

(c) Identifying persons disadvantaged by apartheid with significant management potential and enrolling them in accelerated management programs; and

(d) Establishing timetables to carry out this principle.

(6) Taking reasonable steps to improve the quality of employee's lives outside the work environment with respect to housing, transportation, schooling, recreation, and health:

(a) Providing assistance to employees disadvantaged by apartheid for housing, health care, transportation, and recreation either through the provision of facilities or services or providing financial assistance to employees for such purposes, including the expansion or creation of in-house medical facilities or other medical programs to improve medical care for employees disadvantaged by apartheid and their dependents; and

(b) Participating in the development of programs that address the educational needs of employees, their dependents, and the community.

(7) Implementing fair practices by recognizing the right of all employees, regardless of racial or other distinctions, to self-organization and to form, join, or assist labor organizations, freely and without penalty or reprisal, and recognizing the right to refrain from any such activity:

(a) Refraining from: (i) Interfering with, restraining, or coercing employees in the exercise of their rights of self-organization under this paragraph; (ii) dominating or interfering with the formation or administration of any labor organization or sponsoring, controlling, or contributing financial or other assistance to it, (iii) encouraging or discouraging membership in any labor organization by discrimination in regard to hiring, tenure, promotion, or other condition of employment, (iv) discharging or otherwise disciplining or discriminating against any employee who has exercised any rights of self-organization under this principle, and (v) refusing to bargain collectively with any organization freely chosen by employees pursuant to this principle.

(b) Allowing employees to exercise rights of self-organization, including solicitation of fellow employees during nonworking hours, distribution and posting of union literature by employees during nonworking hours, nonworking areas, and reasonable access to labor organization representatives to communicate with employees on the employer's premises at reasonable times where there are no other available channels which will enable the labor organization to communicate with employees through reasonable efforts.

Dated: November 4, 1985.

Ronald I. Spiers,

Under Secretary of State for Management.

[FR Doc. 85-26011 Filed 11-7-85; 8:45 am]

BILLING CODE 4710-02-M

Enclosure 4

DEPARTMENT OF STATE

22 CFR Parts 60 Through 65

[Departmental Regulations 108.846]

South Africa and Fair Labor Standards

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: On November 8, 1985, the Department of State published a proposed rule (50 FR 46455) to implement the fair labor provisions of Executive Order 12532 of September 9, 1985 (50 FR 36861). This final rule implements the EO's fair labor provisions, taking into account the public comments received.

EFFECTIVE DATE: January 1, 1986.

FOR FURTHER INFORMATION CONTACT: Paula Reed Lynch, Program Officer, (202) 331-8273; F. Allen Harris, Deputy Office Director, Office of Southern African Affairs (202) 647-8252; or Mr. Edward Cummings, (202) 647-1571, Office of the Legal Adviser, Department of State.

SUPPLEMENTARY INFORMATION: Section 2 of E.O. 12532 (50 FR 36861) deals with the labor practices of U.S. nationals and their firms in South Africa. On November 8, the Department of State

published draft implementing regulations as a proposed rule for public comment (50 FR 46455). The supplementary information portion of the proposed rule explains the background for the regulations and the basic scheme established.

Six written comments were received from the public. The Department of State has reviewed the comments and has made certain changes to the regulations as a result. (The changes are to §§ 63.1(a), 63.1(b), 63.1(d)(1), 63.1(d)(2), 63.1(d)(3), 64.1, 65.1(b), 65.1(b)(5), and 65.1(b)(6).)

The comments dealt primarily with the relation of the requirements of the voluntary Sullivan system to those of the proposed regulations. For example, it was pointed out that the evaluation method of the Sullivan system takes into account the performance of firms in relation to each other with respect to some of the principles. Questions were raised as to whether the Department would do likewise with respect to those firms that choose to report directly to the Department of State. The Department intends to make decisions on good faith compliance based on an evaluation of each report on a case-by-case basis. The Department does not intend to rate the companies in relation to each other.

Another Sullivan-related question dealt with the reporting requirements for firms that sign the Sullivan principles during 1986. A new subsection (d)(3) was added to § 63.1 to address this issue.

Section 61.1(a)(6) of the proposed rule would have prohibited the furnishing of routine authentication services related to the other penalties described in that subsection to firms that do not adhere to the principles. Upon review, and based in part on public comments, the Department has concluded that it is highly unlikely that routine authentication services would be involved in such instances. Maintaining a specific provision on this matter would give the erroneous impression that routine authentications are to be denied even in cases where there is no intercession of the kind proscribed in the EO. The Department has accordingly decided not to include a specific provision on this matter. Authentication services will be denied if the services requested constitute intercession within the meaning of § 65.1(b).

Some of the comments dealt with the basic requirements of the EO. For example, one comment recommended that firms employing less than 25 individuals in South Africa be subject to the requirements of the regulations, while another suggested that the requirement apply only to firms employing more than 50. The purpose of these regulations is to implement the EO and accordingly such comments were not accepted in preparing the final rule.

List of Subjects

22 CFR Part 60

United States investments abroad, Fair labor standards, South Africa.

22 CFR Part 61

United States investments abroad, Fair labor standards, South Africa.

22 CFR Part 62

United States investments abroad, Fair labor standards, South Africa, Reporting and recordkeeping requirements.

22 CFR Part 63

United States investments abroad, Fair labor standards, South Africa.

22 CFR Part 64

United States investments abroad, Fair labor standards, South Africa, Reporting and recordkeeping requirements.

22 CFR Part 65

United States investments abroad, Fair labor standards, South Africa, Exports, Penalties.

Subchapter C, consisting of Parts 60 through 65 and an Appendix, is added to Chapter I of Title 22, Code of Federal Regulations, to read as follows:

SUBCHAPTER C—SOUTH AFRICA AND FAIR LABOR STANDARDS

Part

60 Purpose and scope of application.
61 Definitions.
62 Registration.
63 General policies and reporting requirements.
64 Administrative procedures.
65 Non-adherence and penalties.
Appendix to Subchapter C—Examples of Fair Labor Practices

PART 60—PURPOSE AND SCOPE OF APPLICATION

Sec.

60.1 Purpose.
60.2 Scope of application.

Authority: Sec. 203, International Emergency Economic Powers Act (50 U.S.C. 1701); E.O. 12532, Sept. 9, 1985 (50 FR 36861).

§ 60.1 Purpose.

(a) *General.* Section 2 of Executive Order 12532 of September 9, 1985 (50 FR 36861) provides that it is the policy of the United States to encourage all United States firms in South Africa to adhere to certain fair labor standards. It provides furthermore that no department or agency of the U.S. may intercede with any foreign government regarding the export marketing activities in any country of any national of the U.S. employing more than 25 individuals in South Africa who does not adhere to the principles stated in the Order. It is the purpose of this subchapter to implement these requirements of E.O. 12532.

(b) *Relation to the Voluntary Sullivan System.* It has been the policy of the United States since 1977 to encourage voluntary adherence to the Sullivan Code agreed to by a majority of U.S. business firms that operate in South Africa. The requirements of the voluntary code exceed those of the E.O. 12532 in certain respects, and the voluntary nature of the code has set an example for all firms in South Africa. The regulations set forth in this subchapter recognize that some U.S. nationals are not willing to subscribe to the Sullivan Code, and these regulations do not require firms to subscribe to the voluntary system. All U.S. nationals described in § 62.2 and § 63.1 are subject to the requirements of this subchapter. Such nationals who are *bona fide* participants in the Sullivan system are exempt from certain reporting requirements in accordance with § 63.1(d).

§ 60.2 Scope of application.

The requirements of this subchapter are applicable to U.S. nationals (defined in § 61.5) who:

(a) Employ at least 25 individuals in South Africa;

(b) Own or control more than 50 percent of the outstanding voting securities of a foreign subsidiary or other entity that employs at least 25 individuals in South Africa; or

(c) Control in fact any other foreign entity that employs at least 25 individuals in South Africa. Such control consists of the authority or ability of the domestic concern to establish or direct the general policies or day-to-day operations of a foreign subsidiary or enuity in South Africa. Such authority or ability will be presumed under the circumstances described below, subject to rebuttal by competent evidence provided to the Department of State at the time of registration (see § 62.1):

(1) The domestic concern beneficially owns or controls (whether directly or indirectly) 25 percent or more of the voting securities of the foreign subsidiary or entity, if no other person owns or controls (whether directly or indirectly) an equal or larger percentage.

(2) The foreign subsidiary or entity is operated by the domestic concern pursuant to the provisions of an exclusive management contract;

(3) A majority of the members of the board of directors of the foreign subsidiary or entity are also members of the comparable governing body of the domestic concern;

(4) The domestic concern has the authority to appoint the majority of the members of the board of directors of the foreign subsidiary or entity; or

(5) The domestic concern has the authority to appoint the chief operating officer of the foreign subsidiary or entity.

PART 61—DEFINITIONS

Sec.
61.1 Adherence.
61.2 Fair labor standards.
61.3 Office of Southern African Affairs.
61.4 United States.
61.5 U.S. national.

Authority: Sec. 203, International Emergency Economic Powers Act (50 U.S.C. 1701); E.O. 12532 Sept. 9, 1985 (50 FR 36861).

§ 61.1 Adherence.

For purposes of this subchapter, adherence means—

(a) Agreeing to implement the principles specified in § 61.2 in South Africa,

(b) Taking good faith measures to implement each of these principles, and

(c) Reporting accurately to the Department of State on the measures taken to implement the principles in accordance with § 63.1.

§ 61.2 Fair labor standards.

(a) The fair labor standards referred to in this subchapter are as follows:

(1) Desegregating the races in each employment facility;

(2) Providing equal employment opportunity for all employees without regard to race or ethnic origin;

(3) Assuring that the pay system in South Africa is applied to all employees without regard to race or ethnic origin;

(4) Establishing a minimum wage and salary structure based on the appropriate local minimum economic level which takes into account the needs of employees and their families;

(5) Increasing by appropriate means the number of persons in managerial, supervisory, administrative, clerical and technical jobs who are disadvantaged by the apartheid system for the purpose of significantly increasing their representation in such jobs;

(6) Taking reasonable steps to improve the quality of employees' lives outside the work environment with respect to housing, transportation, schooling, recreation, and health;

(7) Implementing fair labor practices by recognizing the right of all employees, regardless of racial or other distinctions, to self-organization and to form, join or assist labor organizations, freely and without penalty or reprisal, and recognizing the right to refrain from any such activity.

(b) The supplement to this subchapter contains illustrative examples of the fair labor practices referred to in this subchapter.

§ 61.3 Office of Southern African Affairs.

"Office of Southern African Affairs" means the Office of Southern African Affairs, Bureau of African Affairs, Department of State, Washington, D.C. 20520.

§ 61.4 United States.

"United States," when used in the geographical sense, includes the several States, the Commonwealth of Puerto Rico, the insular possessions of the United States, and the District of Columbia.

§ 61.5 U.S. National.

For purposes of this subchapter, "U.S. national" means:

(a) Citizens or nationals of the United States or permanent residents of the United States (defined in the Immigration and Nationality Act [8 U.S.C. 1101, 101(a)20, 66 Stat. 163]); and

(b) Corporations, partnerships, and other business associations organized under the laws of the United States, any state or territory thereof, or the District of Columbia.

PART 62—REGISTRATION

Sec.
62.1 Registration.
62.2 Notification of changes in information furnished by registrants.
62.3 Maintenance of records by registrants.

Authority: Sec. 203, International Emergency Economic Powers Act (50 U.S.C. 1701); E.O. 12532 Sept. 9, 1985 (50 FR 36861)

§ 62.1 Registration.

Any U.S. national referred to in § 60.2 is required to register with the Department of State and to indicate whether the U.S. national or entity referred to in § 60.2 agrees to implement the principles stated in § 61.2. They may also indicate whether they are participants in the voluntary Sullivan system. Registration can be accomplished by filing a completed form DSP-66 with the Office of Southern African Affairs. Any such national who believes that it should not be required or is unable to report on the fair labor practices of a foreign subsidiary or entity described in § 60.2 (c) of this subchapter should provide a detailed explanation of the reasons. The explanation should be in the form of a letter, and should accompany the completed registration form. A detailed questionnaire on fair labor practices will be provided by the Office of Southern African Affairs on an annual basis to all registrants. No fee is required for registration.

§ 62.2 Notification of changes in information furnished by registrants.

A registered U.S. national must notify the Department of State of any material changes in the information contained in the registration. Examples of material changes include the establishment, acquisition, or sale of a subsidiary or of a foreign affiliate, a merger, a change of location, or engaging in a different kind of business in South Africa. Such information should be provided within 60 days from the date of the material change.

§ 62.3 Maintenance of records by registrants.

(a) A U.S. national who is required to register pursuant to § 62.1 must maintain records concerning the fair labor practices employed in South Africa by the U.S. national or any entity referred to in § 60.2 effective January 1, 1986. Such records must be maintained for a period of 3 years.

(b) Records maintained under this section shall be available at all times for inspection by the Director of the Office of Southern African Affairs or a person designated by the Director.

PART 63—GENERAL POLICIES AND REPORTING REQUIREMENTS

Sec.
63.1 General policies.
63.2 Influencing activities outside the workplace.
63.3 State Department review.
63.4 Waiver.

Authority: Sec. 203, International Emergency Economic Powers Act (50 U.S.C. 1701); E.O. 12532 Sept. 9, 1985 (50 FR 36861)

§ 63.1 General policies.

(a) *General.* Any U.S. national or entity described in § 60.2 who does not adhere to the fair labor standards stated in § 61.2 of this subchapter shall be ineligible to receive the assistance specified in § 65.1 (b).

(b) *Failure to register.* Any such U.S. national who does not register with the Department of State prior to February 18, 1986, in accordance with § 62.1 shall be ineligible for the assistance specified in § 65.1 and shall be subject to the penalties specified in § 65.2.

(c) *Annual reports.* All U.S. nationals subject to the requirements of this

subchapter shall provide an annual report to the Department of State describing their implementation of the fair labor principles specified in § 61.2, including implementation by any entity described in § 60.2. They shall do so by submitting a completed questionnaire furnished by the Department of State at the time of registration to the Office of Southern African Affairs. The first report shall be provided no later than February 15, 1987.

(d)(1) *Sullivan participants.* Any U.S. national who is a *bona fide* participant in the Sullivan reporting and implementing system is exempt from submitting the questionnaire referred to in paragraph (c) of this *"Bona fide"* participation means (i) subscribing to the Sullivan Code and (ii) filing the report required by the Sullivan monitoring mechanism with that organization and (iii) receiving a Category I, II, or IIIA standing. *Bona fide* participants are deemed to be adhering to the fair labor standards for purposes of this subchapter. Such U.S. nationals shall be required to file a letter with the Office of Southern African Affairs on an annual basis certifying that they are *bona fide* participants in the Sullivan system. Each such letter shall be provided not later than February 15 of each calendar year, commencing on February 15, 1987. Each such letter shall include the following statement:

I certify that [name of firm] is a *bona fide* participant in the Sullivan system for fiscal year [insert], and the firm received a [insert] rating from the Sullivan system for that period.

Any U.S. national participating in the Sullivan system who receives a Category IIIB standing must inform the Department of State by February 15. If such a national receives a Category IIIB standing for the next fiscal year, it shall not be deemed to be a *bona fide* participant pursuant to this subsection and must thereafter complete the required State Department questionnaire.

(2) U.S. nationals who become participants in the Sullivan system in 1986 will be required to submit the first letter referred to in paragraph (d)(1) of this section no later than November 15, 1987.

§ 63.2 Influencing activities outside the workplace.

U.S. nationals referred to in subsection § 60.2 are encouraged to take reasonable measures to extend the scope of their influence on activities outside the workplace by measures such as (a) supporting the right of all businesses, regardless of the racial character of their owners or employees, to locate in urban areas; (b) by influencing other companies in South Africa to follow the principles specified in § 62.2; (c) by supporting the freedom of mobility of all workers, regardless of race, to seek employment opportunities wherever they exist, and (d) by making provision for adequate housing and education for families of employees within the proximity of the employee's place of work.

§ 63.3 State Department review.

(a) The Office of Southern African Affairs shall review each report submitted pursuant to § 63.1(c) to determine whether the U.S. national is adhering to the principles stated in §61.2. The Office of Southern African Affairs may request additional information from the U.S. national and take any steps that may be deemed necessary to verify the information submitted.

(b) If the Office of Southern African Affairs concludes that a person is not taking such steps, it shall afford the person thirty days to provide additional written information to the Department of State.

(c) If a U.S. national who was a participant in the Sullivan system does not file the reports required by the Sullivan monitoring system or otherwise fails to meet the standards ,or continued participation in the Sullivan system, the U.S. national shall immediately inform the Department of State. Such notification should be provided no later than 30 days after receipt of a notification from the Sullivan system that the person is no longer a *bona fide* participant.

§ 63.4 Waiver.

The Director, Office of Southern African Affairs, may make exceptions to the provisions of this subchapter in cases of exceptional or undue hardship or when it is otherwise in the interest of the United States Government.

PART 64—ADMINISTRATIVE PROVISIONS

Sec.
64.1 Administrative procedures.
64.2 Annual report.
64.3 Disclosure of information to the public.

Authority: Sec. 203, International Emergency Economic Powers Act (50 U.S.C. 1701); E.O. 12532 Sept. 9, 1985 (50 FR 36861)

§ 64.1 Administrative procedures.

(a) If the Assistant Secretary for African Affairs concludes that a U.S. national or entity referred to in § 60.2 is not adhering to the principles specified in § 61.2, the Office of Southern African Affairs shall immediately inform the U.S. national concerned and other U.S. Government agencies by appropriate means.

(b) Any U.S. national who has been the subject of an adverse decision pursuant to paragraph (a) of this section shall be entitled to file a written appeal within 30 days of notification of the decision with the Board of Appellate Review of the Department of State. The requirements of Part 7 of Subchapter A of this title of CFR shall be applicable to proceedings before the Board of Appellate Review.

§ 64.2 Annual report.

The Office of Southern African Affairs shall prepare an annual report regarding implementation of Part 63 of this subchapter, which shall be forwarded to other affected U.S. Government agencies and the appropriate committees of the United States Congress.

§ 64.3 Disclosure of information to the public.

Subchapter R of this title of CFR contains regulations on the availability to the public of information and records of the Department of State. The provisions of Subchapter R apply to such disclosures by the Office of Southern African Affairs.

PART 65—NON-ADHERENCE AND PENALTIES

Sec.
65.1 Denial of export marketing support.
65.2 Civil and criminal penalties.

Authority: Sec. 203, International Emergency Economic Powers Act (50 U.S.C. 1701); E.O. 12532 Sept. 9, 1985 (50 FR 36861)

§ 65.1 Denial of export marketing support.

(a) In accordance with Part 63 of this subchapter, no department or agency of the United States may intercede with any foreign government regarding export marketing activity in any country of any U.S. national or entity referred to in § 60.2 who does not adhere to the principles stated in § 61.2 with respect to that U.S. national's operations in South Africa.

(b) For purposes of this section, "intercede with any foreign government regarding export marketing activity" means any contact by U.S. Government personnel with officials of any foreign government which involves or contemplates any effort to assist in selling a good, service, or technology in a foreign market. The following are examples of the activities prohibited:

(1) Assisting non-complying firms by arranging appointments with foreign government officials relating to the

pursuit by the firm of a bid, project, or other commercial activity.

(2) Intervening with a foreign government on behalf of a non-complying firm in pursuit of a bid or project, unless such intervention is necessary to ensure a foreign government's compliance with its obligations, if any under the Agreement on Government Procurement of April 12, 1979 (T.I.A.S. No. 10403);

(3) Assisting non-complying firms in obtaining end-user or other foreign government certificates or documentation necessary for the issuance of U.S. export licenses;

(4) Taking any action to assist a non-complying firm in selling its products, services or technology with respect to a foreign government, including assistance in making appeals regarding foreign government procedures and practices adversely affecting the firm's ability to gain access to the foreign marketplace;

(5) Participation by non-complying firms in Department of Commerce sponsored trade exhibitions and video catalog shows, trade missions and certified shows in foreign countries in which business is conducted primarily with the host government;

(6) Intervening with foreign government officials on behalf of a non-complying firm at any trade fairs, trade missions, and video catalogue shows (i.e., other than those in paragraph (b)(5) of this section).

(c) The following activities with respect to non-complying firms are not prohibited pursuant to this section of the Executive Order:

(1) Preparing market research for use by more than one company and providing general export information;

(2) Distributing generally available informational publications such as Overseas Business Reports, Foreign Economic Trends, and Business America; and

(3) Multilateral and bilateral, government-to-government trade negotiations to resolve trade issues which may affect non-complying firms.

§ 61.2 Civil and criminal penalties.

(a) This subchapter is promulgated pursuant to the authority of E.O. 12532 and the International Emergency Economic Powers Act (50 U.S.C. 1705) (IEEPA)). Section 206 of this Act provides that:

A civil penalty of not to exceed $10,000 may be imposed on any person who violates any license, order, or regulation issued under this title.

Whoever willfully violates any license, order, or regulation issued under this title shall, upon conviction, be fined not more than $50,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both.

Section 206 of the International Emergency Economic Powers Act is applicable to violations of this subchapter and to any license, ruling, regulation, order, direction, or instruction issued hereunder. These criminal and civil penalties are applicable to failures to comply with the registration and reporting requirements established in this subchapter. However, they are not applicable to failures to adhere to the principles stated in § 61.2.

(b) Attention is also directed to 18 U.S.C. 1001, which provides:

Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statement or representation or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(c) This section does not apply to the financing of exports by the Export-Import Bank to South Africa. Such financing continues to be the subject of the requirements contained in section 2(b)(9) of the Export-Import Bank Act of 1945, as amended.

Appendix to Subchapter C—Examples of Fair Labor Practices

The following are illustrative examples of the fair labor standards specified in § 61.2.

(1) Desegregating the races in each employment facility:

(a) Removing all race designation signs;

(b) Desegregating all eating, medical, recreation, and work facilities; and

(c) Terminating all regulations which are based on racial discrimination or preference.

(2) Providing equal employment opportunity for all employees without regard to race or ethnic origin:

(a) Assuring that any health, accident, pension, or death benefit plans that are established are nondiscriminatory and open to all employees without regard to race or ethnic origin; and

(b) Implementing equal and nondiscriminatory terms and conditions of employment for all employees, abolishing job restrictions and differential employment criteria which discriminate on the basis of race or ethnic origin.

(3) Assuring that the pay system is applied to all employees without regard to race or ethnic origins:

(a) Assuring that any wage and salary structure that is implemented is applied equally to all employees without regard to race or ethnic origin;

(b) Eliminating any distinctions between hourly and salaried job classifications on the basis of race or ethnic origin; and

(c) Eliminating any differences in seniority and in grade benefits which are based on race or ethnic origin.

(4) Establishing a minimum wage and salary structure based on the appropriate local minimum economic level which takes into account the needs of employees and their families:

(a) Offering a minimum wage or salary structure that is 30 percent or more higher than the most recent University of South Africa Minimum Living Level for a family of 5 or 6 for the area in which the South African subsidiary or affiliate operates; or

(b) Offering a minimum wage or salary that is 30 percent or more higher than the most recent University of Port Elizabeth Household Subsistence Level for a family of 5 or 6 for the area in which the South African subsidiary or affiliate operates.

(5) Increasing, by appropriate means, the number of persons in managerial, supervisory, administrative, clerical, and technical jobs who are disadvantaged by the apartheid system for the purpose of significantly increasing their representation in such jobs:

(a) Developing training programs that will prepare substantial numbers of persons disadvantaged by apartheid for such jobs as soon as possible, including: (i) Expanding existing programs and forming new programs to train, upgrade, and improve the skills of all categories of employees, including establishing and expanding programs to enable employees to further education and skills at recognized educational facilities; and (ii) creating on-the-job training programs and facilities to assist employees to advance to higher paying jobs requiring greater skills.

(b) Establishing procedures to assess, identify, and actively recruit employees with potential for further advancement;

(c) Identifying persons disadvantaged by apartheid with significant management potential and enrolling them in accelerated management programs; and

(d) Establishing timetables to carry out this principle.

(6) Taking reasonable steps to improve the quality of employee's lives outside the work environment with respect to housing, transportation, schooling, recreation, and health:

(a) Providing assistance to employees disadvantaged by apartheid for housing, health care, transportation, and recreation either through the provision of facilities or services or providing financial assistance to employees for such purposes, including the expansion or creation of in-house medical facilities or other medical programs to improve medical care for employees disadvantaged by apartheid and their dependents; and

(b) Participating in the development of programs that address the educational needs of employees, their dependents, and the community.

(7) Implementing fair practices by recognizing the right of all employees, regardless of racial or other distinctions, to

self-organization and to form, join, or assist labor organizations, freely and without penalty or reprisal, and recognizing the right to refrain from any such activity:

(a) Refraining from: (i) interfering with, restraining, or coercing employees in the exercise of their rights of self-organization under this paragraph; (ii) dominating or interfering with the formation or administration of any labor organization or sponsoring, controlling, or contributing financial or other assistance to it; (iii) encouraging or discouraging membership in any labor organization by discrimination in regard to hiring, tenure, promotions, or other conditions of employment; (iv) discharging or otherwise disciplining or discriminating against any employee who has exercised any rights of self-organization under this principle; and (v) refusing to bargain collective with any organization freely chosen by employees pursuant to this principle.

(b) Allowing employees to exercise rights of self-organization, including solicitation of fellow employees during nonworking hours, distribution and posting of union literature by employees during nonworking hours in nonworking areas, and reasonable access to labor organization representatives to communicate with employees on the employer's premises at reasonable times where there are no other available channels which will enable the labor organization to communicate with employees through reasonable efforts.

Dated: December 23, 1985.

George P. Shultz,

The Secretary of State.

[FR Doc. 86-30078 Filed 12-30-85; 8:45 am]

BILLING CODE 4710-06-M

Enclosure 5

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 545

South African Transactions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Contol is amending the South African Transactions Regulations to prohibit financial institutions in the United States from making loans to the South African Government or its controlled entities, and for other purposes.

EFFECTIVE DATE: 12:01 a.m. Eastern Standard Time, November 11, 1985.

FOR FURTHER INFORMATION CONTACT: Marilyn L. Muench, Chief Counsel, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220; 202/376-0428.

SUPPLEMENTARY INFORMATION: On September 9, 1985, the President issued Executive Order 12532, finding that the policies and actions of the Government of South Africa constitute an unusual and extraordinary threat to the foreign policy and economy of the United States and invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*). Among other measures taken through the Executive Order, the President prohibited financial institutions in the United States from making or approving loans to the South African Government or its controlled entities, except in certain narrowly specified circumstances. The order delegated authority to implement the loan prohibitions to the Secretary of the Treasury. These amendments to the South African Transactions Regulations, including the definitions of certain terms used therein, have been adopted for the sole purpose of implementing the provisions of the Executive Order.

Since the regulations involve a foreign affairs function, the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply. Because the regulations are issued with respect to a foreign affairs function of the United States, they are not subject to Executive Order 12291 of February 17, 1981, dealing with Federal Regulations. The information collection requests contained in this document are being submitted to the Office of Management and Budget under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Notice of OMB action on these requests will be published in the Federal Register.

List of Subjects in 31 CFR Part 545

South Africa, Imports, Krugerrands, Loans, Penalties, Reporting and recordkeeping requirements

PART 545—AMENDED

31 CFR Chapter V, Part 545, is amended as set forth below:

1. The "Authority" citation for Part 545 is revised to read as follows:

Authority: 50 U.S.C. 1701 *et seq.*; E.O. 12532, 50 FR 36861, Sept. 9, 1985; E.O. 12535, 50 FR 40325, October 3, 1985.

2. The table of contents for Part 545 is amended by adding entries for § 545.202 to Subpart B, §§ 545.303–545.310 to Subpart C, §§ 545.404–545.410 to Subpart D, §§ 545.503 and 545.504 to Subpart E, and by adding a new Subpart I as follows:

* * * * *

Subpart B—Prohibitions

Sec.

545.202 Prohibition on loans to the Government of South Africa.

* * * * *

Subpart C—General Definitions

* * * * *

545.303 Importation.
545.304 Loan.
545.305 Financial institution.
545.306 The Government of South Africa; South African Government.
545.307 Entities controlled by the South African Government.
545.308 Person.
545.309 Entity.
545.310 Affiliate.

Subpart D—Interpretations

* * * * *

545.404 Rescheduling existing loans to the South African Government.
545.405 Trade related credits.
545.406 Loans through intermediaries.
545.407 Substitution of the South African Government as obligor.
545.408 Approval of loans by foreign affiliates.
545.409 Loan participations.
545.410 South African law.

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

* * * * *

545.503 Loans for educational, housing, or health facilities.
545.504 Loans to benefit persons disadvantaged by the apartheid system.

* * * * *

Subpart I—Miscellaneous

545.601 Paperwork Reduction Act Notice.

3. New § 545.202 is added to read as follows:

§ 545.202 Prohibition on loans to the Government of South Africa.

(a) Except as authorized under this part, no financial institution in the United States may make or approve any loan, directly or indirectly, to the Government of South Africa as defined in this part.

(b) The prohibition in paragraph (a) of this section shall not apply to any loan which a financial institution in the United States is obligated to make under an agreement entered into before September 9, 1985.

4. Section 545.208 is revised to read as follows:

§ 545.303 Effective dates.

(a) The effective date of the prohibition in § 545.201 shall be 1:01 a.m. Eastern Daylight Time, October 11, 1985.

(b) The effective date of the prohibition in § 545.202 shall be 12:01 a.m. Eastern Standard Time, November 11, 1985.

5. New § 545.303 is added to read as follows:

§ 545.303 Importation.

The term "importation" means the bringing of any item within the jurisdictional limits of the United States with the intent to unlade it.

6. New § 545.304 is added to read as follows:

§ 545.304 Loan.

The term "loan" means any transfer or extension of funds or credit on the basis of an obligation to repay, or any assumption or guarantee of the obligation of another to repay an extension of funds or credit. The term "loan" includes, but is not limited to: Overdrafts; currency swaps; the purchase of debt securities issued by the South African Government after November 11, 1985; the purchase of a loan made by another person; the sale of financial assets subject to an agreement to repurchase; and a renewal or refinancing whereby funds or credits are transferred or extended to the South African Government. The term "loan" does not include reschedulings of existing loans under § 545.404.

7. New § 545.305 is added to read as follows:

§ 545.305 Financial institution.

The term "financial institution" means any entity engaged in the business of accepting deposits or making, transferring, holding, or brokering loans, including, but not limited to, banks, savings banks, trust companies, savings and loans associations, credit unions, securities brokers and dealers, investment companies, employee pension plans, holding companies of such institutions, and subsidiaries of any of the foregoing.

8. New § 545.306 is added to read as follows:

§ 545.306 Government of South Africa; South African Government.

The terms "Government of South Africa" and "South African Government" include the national government of South Africa; the South African Reserve Bank; the government of any political subdivision of South Africa; the government of any territory under the dominion of South Africa; the government of any "homeland" established under the apartheid system, including Bophuthatswana, Ciskei, Transkei, and Venda; and any entity controlled by the South African Government, as defined in § 545.307.

9. New § 545.307 is added to read as follows:

§ 545.307 Entity controlled by the South African Government.

The term "entity controlled by the South African Government" includes any corporation, partnership, association or other entity in which the South African Government owns a majority or controlling interest, any entity managed or substantially funded by that government, and any entity which is otherwise controlled by that government.

10. New § 545.308 is added to read as follows:

§ 545.308 Person.

The term "person" means an individual or an entity.

11. New § 545.309 is added to read as follows:

§ 545.309 Entity.

The term "entity" means a corporation, partnership, association, or other organization.

12. New § 545.310 is added to read as follows:

§ 545.310 Affiliate.

The term "affiliate" includes, but is not limited to, a branch or a subsidiary.

13. New § 545.404 is added to read as follows:

§ 545.404 Rescheduling existing loans to the South African Government.

Provided that no funds or credits are thereby transferred or extended to the Government of South Africa, § 545.202 does not prohibit a financial institution in the United States from rescheduling loans to the South African Government or otherwise extending the maturities of such loans, or from charging fees, or interest at commercially reasonable rates, in connection therewith.

14. New § 545.405 is added to read as follows:

§ 545.405 Trade related credits.

(a) Section 545.202 prohibits financial institutions in the United States from opening, issuing, or confirming letters of credit or similar trade credits for which the Government of South Africa is the account party, except those which have been fully collateralized in such institution by the South African Government in advance of payment. Section 545.202 also prohibits financial institutions in the United States from creating or discounting acceptances or similar instruments to provide financing for the South African Government, except acceptances which have been fully funded in such institutions by the South African Government in advance of creation or discounting.

(b) Section 545.202 does not prohibit financial institutions in the United States from opening, issuing, or confirming letters of credits or similar trade credits respecting exports of the South African Government. Section 545.202 does not prohibit financial institutions in the United States from creating or discounting acceptances respecting exports of the South African Government.

15. New § 545.406 is added to read as follows:

§ 545.406 Loans through intermediaries.

Section 545.202 prohibits a financial institution in the United States from making a loan to any person in the United States or a foreign country, where the institution has reason to believe that the loan is being obtained for or on behalf of the South African Government, and that the relevant funds or credit will be made available to the South African Government.

16. New 545.407 is added to read as follows:

§ 545.407 Substitution of the South African Government as obligor.

Section 545.202 does not prohibit a financial institution in the United States from complying with applicable laws, regulations or other directives of the South African Government requiring or permitting the South African Government to become the primary or secondary obligor with respect to an outstanding loan, provided that no funds or credits are thereby transferred or extended to the South African Government.

17. New § 545.408 is added to read as follows:

§ 545.408 Approval of loans by foreign affiliates.

Section 545.202 prohibits financial institutions in the United States from approving loans by their foreign affiliates to the South African Government.

18. New § 545.409 is added to read as follows:

§ 545.409 Loan participations.

Section 545.202 prohibits a financial institution in the United States from purchasing, or otherwise acquiring a participation in, all or part of any loan made by any other person or persons to the South African Government, regardless of the date of the original loan, unless such financial institution is obligated to make the purchase under an agreement entered into before September 9, 1985, or such acquisition is incidental to the purchase or acquisition of an institution or all or substantially all of the assets of an institution that has made or acquired participations in such loans.

19. New § 545.410 is added to read as follows:

§ 545.410 South African law.

If, under applicable laws of South Africa, a financial institution in the United States cannot obtain enough information from a person in South Africa to enable it reasonably to conclude that a loan is not being obtained for or on behalf of the South African Government, § 545.202 prohibits the loan.

20. New § 545.503 is added to read as follows:

§ 545.503 Loans for educational, housing, or health facilities.

Specific licenses may be issued to financial institutions in the United States authorizing them to make loans to the South African Government, where the loans will be used to benefit all persons on a non-discriminatory basis, and where it is determined that the loans are for educational, housing, or health facilities.

21. New § 545.504 is added to read as follows:

§ 545.504 Loans to benefit persons disadvantaged by the apartheid system.

Specific licenses may be issued to financial institutions in the United States authorizing them to make loans to the South African Government, where it is determined that the loans will improve the welfare or expand the economic opportunities of persons in South Africa disadvantaged by the apartheid system. No such loan will be authorized to any apartheid enforcing entity.

22. New Subpart I, consisting of § 545.901 which is reserved, is added to read as follows:

Subpart I—Miscellaneous

§ 545.901 Paperwork Reduction Act Notice (Reserved.)

Dated: November 6, 1985.

Dennis M. O'Connell,

Director, Office of Foreign Assets Control.

Approved: November 8, 1985.

E.T. Stevenson,

Acting Assistant Secretary, Enforcement and Operations.

[FR Doc. 85-27009 Filed 11-13-85; 12:44 pm]

BILLING CODE 4810-25-M

Enclosure 6

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 371, 373, 379, 385, 386, 399

[Docket No. 51069-5169]

Export Controls on the Republic of South Africa

AGENCY: Office of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: This rule prohibits certain trade and other transactions involving South Africa set out in Executive Order 12532 and in section 6(n) of the Export Administration Act of 1979, as amended by the Export Administration Amendments Act of 1985. The main effect of the provisions implementing section 6(n) is to require validated export licenses for all exports to the South African military and police, even though the export could be made under general license to other parties in South Africa. Licenses to the military and police will be denied, except when specified medical and anti-hijacking exemptions apply. The principal effect of the Executive Order is to prohibit exports of all computers, computer software, or goods or technology to service computers to all apartheid enforcing entities of the South African Government. The Export Administration regulations list entities that have been determined to enforce apartheid. The list will be under continual review, and likely will be modified and expanded periodically.

Specifically, these regulations provide for:

1. Identifying the Republic of South Africa agencies that enforce apartheid or administer the black passbook and similar controls;

2. Imposing new validated license requirements for previously uncontrolled personal computers, computer software, and goods and technical data to service computers;

3. Revising licensing policies to reflect the prohibitions;

4. Requiring written assurance for export of technical data under General License GTDR;

5. Publishing a certification required from consignees of computers or goods to service computers in the Republic of South Africa and Namibia; and

6. Requiring denial of licenses for exports to nuclear utilization and production facilities.

In addition, consistent with the Executive Order, the Office of Export Administration (OEA) will institute and vigorously administer an enhanced system of end use verification, which will involve periodic verification by U.S. Government or exporter personnel of location and use of certain computers.

EFFECTIVE DATE: October 11, 1985.

FOR FURTHER INFORMATION CONTACT: James Allen, Policy Planning Division, Office of Export Administration, Department of Commerce, Washington, D.C. (Telephone: (202) 377-8212).

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

In connection with various rulemaking requirements, the Office of Export Administration has determined that:

1. This rule is exempted, pursuant to section 13(a) of the Export Administration Act of 1979, as amended, from the provisions of the Administrative Procedure Act requiring notice of proposed rulemaking, an opportunity for public participation, and a delay in effective date (5 U.S.C. 553). This regulation involves a foreign affairs function of the United States.

2. This rule contains a collection of information requirement under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* These requirements have been approved by the Office of Management and Budget under control numbers 0625-0001, 0625-0052, and 0625-0140. OMB approval is pending for the new reporting requirement contained in EAR 386.4(a)(9)(iv)(B). Comments may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Department of Commerce/International Trade Administration.

3. Because a notice of proposed rulemaking is not required to be published for this rule, it is not a rule within the meaning of section 601(2) of the Regulatory Flexibility Act and is not subject to the requirements of that Act. Accordingly, no preliminary or final Regulatory Analysis has been or will be prepared.

4. Because this rule concerns a foreign affairs function of the United States, it is not a rule or regulation within the meaning of Section 1(a) of Executive Order 12291 and, accordingly, is not subject to the requirements of that order. Accordingly, no preliminary or final Regulatory Impact Analysis has been or will be prepared.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on these regulations are welcome on a continuing basis.

List of Subjects

15 CFR Part 371

Exports.

15 CFR Part 373

Exports.

15 CFR Part 379

Exports, Science and technology.

15 CFR Part 385

Communist countries, Exports.

15 CFR Part 389

Exports.

15 CFR Part 399

Exports.

Accordingly, the Export Administration Regulations (15 CFR Parts 368–399) are amended as follows:

1. The authority citations for 15 CFR Parts 371, 373, 379, 385, 389 and 399 are revised to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503, 50 U.S.C. app. 2401 *et seq.*, as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 98-94 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 99-233, 50 U.S.C. 1701 *et seq.*; E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985).

PART 371—[AMENDED]

Section 371.2 is amended by adding paragraph (c)(11), which was formerly reserved:

§ 371.2 General Provisions.

(c) Prohibited shipments. * * *

(11) That exporter or reexporter knows or has reason to know that their commodity is for delivery, directly or indirectly, to or for use by or for military or police entities in the Republic of South Africa or Namibia. This includes commodities for purposes of servicing equipment owned, controlled or used by or for such entities; or

PART 373—[AMENDED]

3. Section 373.1 is amended by revising paragraph (a)(1)(iii) to read as follows and by removing paragraph (a)(3):

§ 373.1 Introduction.

(a) *Special Limitations.* (1) * * *

(iii) Export or reexport any computers covered by CCL entry 1565 or 0565G, or any goods intended to service computers, to or for use by or for apartheid enforcing entities of the Government of South Africa identified in Supplement No. 1 to Part 385.

4. Section 373.3 is amended by removing the comma, and placing a colon after "Namibia" in the first sentence of (d)(3)(ii)(E)(*7*)(*ii*), and by removing the remainder of the sentence and by revising the phrase "computer-related equipment" in the first sentence of (d)(3)(ii)(E)(*7*)(*iii*) to read "goods to service computers" and by revising the certification in (d)(3)(ii)(E)(*7*)(*iii*) to read:

I(we) certify that the commodities and/or technical data received under this license will not be sold or otherwise made available, directly, or indirectly, to or for use by or for the following entities in the Republic of South Africa or Namibia: police or military entities, any entity involved directly or indirectly in either a nuclear or weapons nuclear end use, or entities identified by the U.S. Department of State as enforcing apartheid as reflected in Supplement No. 1 to Part 385 of the Export Administration Regulations. These commodities are not to be used to service computers owned, controlled, or used by or for the entities indicated above.

Note.—See sections 373.3(a)(3) and 379.5 for definitions relating to nuclear end use.

5. Section 373.3(a)(1)(iii) is revised to read as follows:

(a) * * * (1) * * *

(iii) A system for timely distribution to consignees and verification of receipt by consignees of the Table of Denial Orders (TDO) (Supplement No. 1 to Part 386), the list (where appropriate) of South African entities enforcing apartheid (Supplement No. 1 to Part 385), and other regulatory material necessary to ensure compliance;

PART 379—[AMENDED]

6. Section 379.4(a) is revised to read as follows:

§ 379.4 General License GTDR: Technical Data Usage Restriction.

(a) *Restrictions Applicable to the Republic of South Africa and Namibia.*—

(1) *General Prohibition.* No technical data may be exported or reexported to the Republic of South Africa or Namibia under this General License GTDR where the exporter or reexporter knows or has reason to know that the data or any products of the data are for delivery, directly or indirectly, to or for use by or for military or police entities in these destinations or for use in servicing equipment owned, controlled or used by or for such entities. As used in this paragraph (e), the term "any products of the data" includes the direct product [1] of the data and any subsequent products of the direct product. No technical data for use in servicing computers, and no computer software, may be exported or reexported to the Republic of South Africa or Namibia under this General License GTDR where the exporter or reexporter knows or has reason to know that the data will be made available to or for use by or for apartheid-enforcing entities identified in Supplement No. 1 to Part 385. In addition, no technical data relating to the commodities listed in Supplement No. 2 to this Part 379 may be exported or reexported under this General License GTDR to any consignee in the Republic of South Africa or Namibia.

(2) *Written Assurance.* In addition to any written assurances that may be required by paragraph (*7*) of this section, no export or reexport of technical data, including computer software, may be made under this General License GTDR until the exporter has received written assurance from the importer that neither the technical data nor the direct product [1] of the data will be made available to or for use by or for military or police entities of the Republic of South Africa or Namibia. If the technical data is intended to service computers or consists of computer software, the written assurance must also state that the data will not be made available to or for use by or for the apartheid-enforcing entities identified in Supplement No. 1 to Part 385. To facilitate this assurance, the potential exporter shall provide a current copy of Supplement No. 1 to Part 385 to the intended recipient at the time the written assurance is requested.

PART 399—[AMENDED]

7. § 399.4(a) is revised to read as follows:

[1] The term "direct product," as used in this [illegible] is defined to mean the immediate product [illegible] including production and servicing produced directly by use of the technical data.

§ 385.4 Country Groups T&V.

(a) *Republic of South Africa and Namibia.* In conformity with the United Nations Security Council Resolutions of 1963 and 1977 relating to exports of arms and munitions to the Republic of South Africa, and consistent with U.S. foreign policy toward the Republic of South Africa and Namibia, the Department of Commerce has established the following special policies for commodities and technical data under its licensing jurisdiction.

(1) An embargo is in effect on the export or reexport to the Republic of South Africa and Namibia of arms, munitions, military equipment and materials, and materials and machinery for use in manufacture and maintenance of such equipment. Commodities to which this embargo applies are listed in Supplement No. 2 to Part 379 of this chapter.

(2) An embargo is in effect on the export or reexport to the Republic of South Africa or Namibia of *any* commodity, including commodities that may be exported to any destination in Country Group V under a general license, where the exporter or reexporter knows or has reason to know that the commodity will be sold to or used by or for military or police entities in these destinations or used to service equipment owned, controlled or used by or for such military or police entities. (See § 385.4(a)(7) and (10) for case-by-case exceptions.)

(3) An embargo is in effect on the export or reexport to the Republic of South Africa or Namibia of technical data—except technical data generally available to the public that meets the conditions of General License GTDA—where (i) the technical data relate to the commodities listed in Supplement No. 2 to Part 379 of this chapter, (ii) the exporter or reexporter knows or has reason to know that the technical data or any product of the data as defined in § 379.4(e) of this chapter are for delivery to or for use by or for the military or police entities of these destinations or for use in servicing equipment owned, controlled or used by or for these entities (see § 385.4(a)(7) and (10) for case-by-case exceptions), or (iii) the technical data consist of data to service computers or of computer software and the exporter or reexporter knows or has reason to know that it will be made available to or for use by or for apartheid enforcing entities identified in Supplement No. 1 to Part 385 (with case-by-case exceptions possible for humanitarian purposes). In addition, users in the Republic of South Africa or Namibia of technical data that do qualify for export or reexport under the provisions of General License GTDR must provide a written assurance to the U.S. exporter as required by § 379.4(e)(2) of this chapter.

(4) Parts, components, materials and other commodities exported from the United States under either a general or validated export license may not be used abroad to manufacture or produce foreign-made end-products where it is known or there is reason to know the end-product will be sold to or used by or for military or police entities in the Republic of South Africa or Namibia. (See § 385.4(a)(7) and (10) for case-by-case exceptions.)

(5) A validated export license is required for the export to the Republic of South Africa and Namibia of any instrument and equipment particularly useful in crime control and detection, as defined in § 378.14 of this chapter.

(6) General License GIT may not be used for any commodity destined for the Republic of South Africa or Namibia (see § 371.4(b) of this chapter).

(7) Applications for validated licenses will generally be considered favorably on a case-by-case basis for the export of medicines, medical supplies, medical equipment, related technical data, and parts and components, to any end-user.

(8) A validated license is required for export to all consignees of aircraft and helicopters. Applications will generally be considered favorably on a case-by-case basis for such exports for which adequate written assurances have been obtained against military, paramilitary, or police use.

(9)(i) A validated license is required for the export or reexport to government consignees of computers as defined in CCL entries 1565A and 6565C, and of goods to service computers. "Goods to service computers" include any national security-controlled item intended for such use, and any items in ECCN 6504F. Applications will be denied if the export is likely to be used by or for apartheid enforcing entities identified in Supplement No. 1 to Part 385, with case-by-case exceptions possible for humanitarian purposes. (ii) Insubstantial U.S. origin parts or peripherals in foreign origin computer systems may be approved on a case-by-case basis. Content is generally considered to be insubstantial when it is 20% or less by value. (iii) Applications to export computers or goods to service computers to the Republic of South Africa or Namibia must be accompanied by the following certification signed by the ultimate consignee:

I[We] certify that we are the recipient of the commodities and/or technical data to be delivered under this license, that we are not affiliated with any apartheid-enforcing entity, and that the commodities and/or technical data will not be sold or otherwise made available, directly or indirectly, to or for use by or for the following entities in the Republic of South Africa or Namibia: police or military entities, any entity involved directly or indirectly in either a nuclear or sensitive nuclear end use, or entities identified by the U.S. Department of State as enforcing apartheid as reflected in Supplement No. 1 to Part 385 of the Export Administration Regulations. These commodities/technical data are not to be used to service computers owned, controlled, or used by or for the entities indicated above. I[We] will cooperate with post-shipment inquiries by U.S. officials to verify disposition or use of the commodities/technical data. If requested by the exporter, we will periodically provide information concerning the disposition or use of commodities/technical data received under this license, including the identity of customers to whom the items were resold.

Note.—See §§ 373.3(a)(2) and 378.3 for definitions relating to nuclear end uses.

(iv)(A) Exporters shall make available to each ultimate consignee a current copy of Supplement No. 1 to Part 385 identifying apartheid enforcing entities. OEA may require the licensee to certify subsequent to delivery that the computers have not been retransferred to unauthorized end-users or end-users.

(B) When the license authorizes resale within the Republic of South Africa or Namibia, the requirement may include identification of customers to whom the ultimate consignees have sold the computers, with further identifications of customers to be provided at six month intervals until all computers exported under the license have been sold.

(10) Applications for validated licenses will generally be considered favorably on a case-by-case basis for the export of commodities and related technical data, and parts and components, to be used in efforts to prevent acts of unlawful interference with international civil aviation.

(11) Applications for validated licenses for commodities and technical data for nuclear production or utilization facilities or those likely to be diverted to such facilities will be denied, except on a case-by-case basis to assist International Atomic Energy Agency (IAEA) safeguards or IAEA programs generally available to member states, or for technical programs to reduce proliferation risks, or for exports that are determined to be necessary for humanitarian reasons to protect the public health and safety.

(12) License applications involving contracts entered into prior to the President's Executive Order of September 9, 1985, will be considered on

a case-by-case basis in accordance with the regulations and policies that were in effect prior to the issuance of such Order. Applications involving contracts entered into on or after September 9, 1985, will be subject to the October 11, 1985, revisions to the regulations that implement that Order.

PART 385—[AMENDED]

8. A new Supplement No. 1 to Part 385 (which was formerly reserved) is added as follows:

Supplement No. 1 to Part 385—South Africa Entities Enforcing Apartheid

The following have been identified as South African entities that enforce apartheid. Exporters should be aware that this list cannot be all-inclusive because names of agencies are subject to change, and because agencies may assume apartheid enforcing activities in the future. Before making commitments to export, exporters may wish to seek guidance from the Office of Southern African Affairs (AF/S), Department of State, Washington, DC 20520, to ascertain whether or not a potential customer is an "agency enforcing apartheid."

Ministry of Justice
Ministry of Home Affairs and National Education
Ministry of Constitutional Development and Planning
Ministry of Law and Order
Ministry of Manpower
Ministry of Education and Developing Aid, including the Development Boards and the Rural Development Boards (formerly known as the Ministry of Cooperation, Development and Education)

Other agencies enforcing apartheid (including local, regional and "Homeland agencies") e.g., those that regulate employment, classification, or residence of non-whites.

Note.—The Department of State has determined that the following agencies are not considered to be apartheid enforcing entities:

Ministry of Communication and Public Works (This includes post and telecommunication agencies)
Ministry of Agricultural Economics and Water Affairs
Ministry of Mineral and Energy Affairs
Ministry of Finance.

9. Supplement No. 2 to Part 385 is amended by revising paragraph 1(a) and removing 1(c) as follows:

Supplement No. 2 to Part 385—Interpretations

1. The Department has received * * *

(a) In addition to the military and police of South Africa and Namibia, the following are considered to be police or military entities:

ARMSCOR (Armaments Development and Production Corporation) and its subsidiaries (Nimrod, Atlas Aircraft Corporation, Eloptro (Pty) Ltd., Kentron (Pty) Ltd., Infoplan Ltd., Lyttleton Engineering Works (Pty) Ltd., Naschem (Pty) Ltd., Pretoria Metal Pressing (P.M.P.) (Pty) Ltd., Somchem (Pty) Ltd., Swartklip Products (Pty) Ltd., Telcast (Pty) Ltd., and Musgrave Manufacturers and Distributors)
Department of Prisons
"Homeland" Police and Armed Forces
National Institute of Defense Research of CSIR
National Intelligence Services
South African Railways Police Force
Weapons research activities of the Council for Scientific and Industrial Research (CSIR)

(b) * * *

PART 386—[AMENDED]

10. § 386.8(a)(2) is amended by removing the footnote.

11. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 4 (Transportation Equipment), ECCN 6499G is amended by revising the "Special South Africa and Namibia Controls" paragraph immediately following the "Technical Data" paragraph as follows:

6499G Other transportation equipment, n.e.s.; and parts and accessories, n.e.s.

* * * * *

Special South Africa and Namibia Controls: A validated license is required for export or reexport to the Republic of South Africa and Namibia if intended for delivery to or for use by or for military or police entities in these destinations, or for use in servicing equipment owned, controlled, or used by or for these entities. See § 385.4(a).

12. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1565A is amended by revising the "Special South Africa and Namibia Controls" paragraph immediately following the "Special Licenses Available" paragraph to read as follows:

1565A Electronic computers, "related equipment", equipment or systems containing electronic computers; and specially designed components and accessories for these electronic computers and "related equipment".

* * * * *

Special South Africa and Namibia Controls:

Foreign policy export controls apply to exports to or for use by or for government consignees in the Republic of South Africa and Namibia. See § 385.4(a)(9).

PART 399—[AMENDED]

13. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 8 (Rubber and Rubber Products), ECCN 6899G is amended by revising the "Special South Africa and Namibia Controls" paragraph immediately following the "Special Licenses Available" paragraph to read as follows:

6899G Other rubber and rubber products, n.e.s.

* * * * *

Special South Africa and Namibia Controls: A validated license is required for export or reexport to the Republic of South Africa and Namibia if intended for delivery to or for use by or for military or police entities in these destinations, or for use in servicing equipment owned, controlled, or used by or for these entities. See § 385.4(a).

14. The Commodity Control List (Supplement No. 1 to 399.1) is amended by adding the following "Special South Africa and Namibia Controls" paragraph immediately following the "Special Licenses Available" paragraph to the below listed ECCN's:

Special South Africa and Namibia Controls: A validated license is required for export or reexport to the Republic of South Africa and Namibia if intended for delivery to or for use by or for military or police entities in these destinations, or for use in servicing equipment owned, controlled, or used by or for these entities. See § 385.4(a)

6098F	6398G
6099G	5565D
6191F	6594F
6199G	6599G
6299G	6699G
6360F	6699G
6391F	6779F
6392F	6799G
6398G	6899G.

15. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), new ECCN's 8565G and 8594F are added in numerical order (disregarding the first digit).

8565G Personal computers excepted from control under ECCN 1565A because they meet the specifications of paragraph (h)(2)(iv) of 1565A.
Controls for ECCN 8565G
Unit: Report in number.
Validated License Required: Country Groups SZ.
GLV $ Value Limit: General License GLV not applicable; however, another general license may apply.
Special South Africa and Namibia Controls: A validated license is required for export or reexport to the Republic of South Africa and Namibia if intended for delivery to or for use by or for military or police entities in these destinations or entities enforcing apartheid identified in Supplement No. 1 to Part 385, or for use in servicing equipment owned, controlled, or used by or for these entities. See § 385.4(e).

8594F Electronic equipment specially designed to service computers, n.e.s. (specify make and model).
Control for ECCN 8594F
Unit: Report in "number".

Validated License Required: SZ, the Republic of South Africa and Namibia.
GLV $ Value Limit: $0 to all destinations.
Processing Code: EE
Special Licenses Available: See Part 373.

Advisory Note.—Licenses are likely to be approved for export to the Republic of South Africa and Namibia if the recipient has provided the written assurance required by § 385.4(a)(9).

John K. Boidock,
Director, Office of Export Administration, International Trade Administration.
November 14, 1985.
[FR Doc. 85-27482 Filed 11-14-85; 3:17 pm]
BILLING CODE 3510-DT-M